(25,660)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 830.

UNION DRY GOODS COMPANY, PLAINTIFF IN ERROR,

vs.

THE GEORGIA PUBLIC SERVICE CORPORATION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 13, 1917.

1 UNITED STATES OF AMERICA *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Union Dry Goods Company plaintiff in error, and the Georgia Public Service Corporation, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right privilege, or immunity was claimed under the Constitution, or any treaty
2 or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Union Dry Goods Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 15 day of November, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

Allowed by:

WM. H. FISH,
Chief Justice of the Supreme Court
of the State of Georgia.

Filed in office Nov. 25, 1916. W. E. Talley, Deputy Clerk Supreme Court of Georgia.

3 [Endorsed:] —. Supreme Court of the United States, October Term, 191–. —— —— vs. —— ——. Writ of Error.

4 UNITED STATES OF AMERICA:

To The Georgia Public Service Corporation, Greetings:

Your are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington within 30 days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of Georgia wherein the Union Dry Goods Company is the plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Fish, Chief Justice of the Supreme Court of Georgia, this the 15th day of November, 1916.

WM. H. FISH,
Chief Justice Supreme Court of Georgia.

Due and legal service of the foregoing citation is hereby acknowledged and copy received. All other and future service is hereby waived.

This the 22 day of October, 1916.

ELLIS & GLAWSON,
Attorney for the Georgia Public Service Corporation.

Filed in office Nov. 25, 1916. W. E. Talley, Deputy Clerk, Supreme Court of Georgia.

5 In the Supreme Court of the State of Georgia.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

To the Honorable William H. Fish, Chief Justice of the Supreme Court of the State of Georgia:

The petition of the Union Dry Goods Company, a corporation organized and existing under the law of Georgia, respectfully shows that heretofore, to wit, on the 6th day of May, 1915, there was tried in the Superior Court of Bibb County, in the County of Bibb and State of Georgia, a case in which your petitioner was plaintiff and the Georgia Public Service Corporation, a corporation of said State and County was defendant. The declaration of the plaintiff in said case was a petition for injunction and specific performance in which it was alleged that the plaintiff had prior to the filing of said suit made a valid written contract with the defendant for electric current at a

certain rate fixed by the contract, for a period of years, and it was further alleged that during the life of this contract the said defendant had applied to the Railroad Commission of Georgia for an order allowing it to increase the rate charged for electric current in the City of Macon, that an order had been granted by the Railroad Commission of Georgia in a proceeding to which your petitioner was not a party fixing a maximum schedule of rates which said defendant was allowed to charge for its electric current, said maximum rate
6 being greater than the contract rate between the plaintiff and defendant, and it was further alleged that the defendant had thereupon demanded payment from your petitioner of this maximum rate and upon your petitioner's refusing to pay said maximum rate was threatening to discontinue its current to your petitioner, and it was further alleged that the order of the Railroad Commission of Georgia in so far as it affected this contract between the plaintiff and defendant was in violation of article one, section ten of the Constitution of the United States which provides that no state shall pass any ex post facto law or law impairing the obligation of contracts, and it was further alleged that it was also in violation of Article eight, Article five, of the Constitution of the United States, which provides that no person shall be deprived of property without due process of law nor shall private property be taken for public use without just compensation; and said petition prayed for the specific performance of the contract between plaintiff and defendant and an injunction preventing said defendant from cutting off its current.

Upon the interlocutory trial of the injunction in said case your petitioner as it was authorized under the rules of practice and procedure governing the Courts of the State of Georgia, among other things urged the following rights, privileges and immunities arising under the laws and Constitution of the United States, to wit:

1st. That said order of the Railroad Commission of Georgia relied upon by the defendant as its reason for abrogating its
7 contract was so far as the same affected this contract unconstitutional and void because it was in violation of section ten, article one, of the Constitution of the United States which provides that no State shall pass any ex post facto law or law impairing the obligation of contracts.

2nd. That the said order relied upon by defendant was void and unconstitutional as applied to this contract because the same was in conflict with article eight, article five, of the Constitution of the United States which provides that no person shall be deprived of property without due process of law nor private property taken for public use without just compensation.

Upon said interlocutory trial the Court decided the question adversely to your petitioner and rendered a judgment in favor of the defendant. Thereafter your petitioner in accordance with the rules of practice and procedure governing the Courts of the State of Georgia, sued out a bill of exceptions to the Supreme Court of Georgia to review this interlocutory judgment, and upon the argument of said case in the Supreme Court of Georgia specially urged among other things the rights, privileges and immunities guaran-

teed to your petitioner under the Constitution and laws of the United States and especially insisted that the contract relied upon by petitioner was valid and binding upon defendant by reason of the provision of article one, section ten, of the Constitution of the United States which provides that no State shall pass any
8 ex post facto law or law impairing the obligation of contracts, and by the provisions of article eight, article five, of the Constitution of the United States which provides that no person shall be deprived of property without due process of law nor private property taken for public use without just compensation, and especially urged that the order of the Railroad Commission of Georgia relied upon by the defendant was void and unconstitutional because it was in conflict with the aforesaid provisions of the Constitution of the United States. Said Supreme Court of Georgia filed an opinion and rendered judgment affirming the ruling and judgment of said Bibb Superior Court and thereby expressly denied to your petitioner all the rights, privileges and immunities as aforesaid guaranteed to it by the Constitution and laws of the United States. This judgment not being a final judgment in which petitioner could sue out a writ of error and carry said case to the Supreme Court of the United States, said main case came on to be heard in Bibb Superior Court on the 6th day of May 1915 as aforesaid; and on the trial in Bibb Superior Court your petitioner among other things urged the following rights, privileges and immunities arising under the Constitution and laws of the United States:

1st. That said order of the Railroad Commission of Georgia relied upon by the defendant as its reason for abrogating its contract was so far as the same affected this contract unconstitutional and void because it was in violation of section ten, article one,
9 of the Constitution of the United States which provides that no State shall pass any ex post facto law or law impairing the obligation of contracts, and that the Acts of the legislature of 1907, page 72, section- 5 and 6, was also void and unconsitutional as affecting petitioner's contract for the same reason.

2nd. That the said order relied upon by the defendant was void and unconstitutional as applied to this contract because the same was in conflict with article eight, article five, of the Constitution of the United States which provides that no person shall be deprived of property without due process of law nor private property taken for public use without just compensation.

Upon the trial of said cause the Court presiding in said case without the intervention of a jury, by agreement of the parties in accordance with the rules of practice and procedure governing the Courts of the State of Georgia, rendered a verdict and judgment against your petitioner and thereby expressly denied to your petitioner the rights, privileges and immunities guaranteed to it under the Constitution and laws of the United States as aforesaid. Thereafter your petitioner in accordance with the rules of practice and procedure governing the Courts of Georgia sued out a bill of exceptions and carried said case to the Supreme Court of the State of Georgia, the same being the highest Court in the State which

had jurisdiction to review the ruling and judgment of said Bibb Superior Court, and in the argument of said case in the said
10 Supreme Court of Georgia your petitioner expressly urged among other things the rights, privileges and immunities guaranteed to it by the Constitution and laws of the United States in that it insisted upon said trial that the contract relied upon by your petitioner was valid and binding under the provisions of article one, section ten, of the Constitution of the United States which provides that no State shall pass any ex post facto law or law impairing the obligation of contracts, and also article eight, article five, of the Constitution of the United States which provides that no person shall be deprived of property without due process of law nor private property taken for public use without just compensation, and by the provisions of the aforesaid section of the Constitution of the United States the order of the Railroad Commission of Georgia relied upon by the defendant was void and unconstitutional, and on the 18 day of August 1916 said Supreme Court of Georgia filed an opinion and rendered a judgment affirming the ruling and judgment of said Bibb Superior Court and thereby expressly denied to your petitioner all the rights, privileges and immunities as aforesaid guaranteed to it by the Constitution and laws of the United States.

Wherefore, your petitioner prays for an allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Georgia and the Judges thereof and that the record in said case may be removed into said Supreme Court of the United States and the errors complained of by your peti-
11 tioner may be examined and corrected and said judgment be reversed. Your petitioner further prays that it be permitted to file a bond to secure payment of all future costs in said case in such sum as your Honor may direct and that thereupon this writ of error be allowed.

UNION DRY GOODS COMPANY,
By R. D. FEAGIN,
O. C. HANCOCK,
R. S. WIMBERLY,
Its Attorneys at Law.

12 In the Supreme Court of the State of Georgia.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Now comes the plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of Georgia in the above entitled matter there was manifest error in this, to wit:

1st. The Court erred in affirming the judgment of Bibb Superior Court wherein it was held that the order of the Railroad Commission of Georgia, and the act of the legislature of Georgia contained in

the acts of 1907, page 72, section- 5 and 6, defining the jurisdiction and powers of the Railroad Commission of Georgia and giving it the authority to determine what are just and reasonable rates, and under which the Railroad Commission of Georgia assumed to pass the order aforesaid, relied upon by the defendant if this cause was valid and constitutional and binding upon plaintiff and that the contract relied upon by the plaintiff was invalid and not binding upon the defendant, for the reason that said contract referred to was valid and binding upon defendant and said order referred to was invalid and not binding upon plaintiff but was invalid under the provisions of article one, section ten, of the Constitution of the United States which provides that no state shall pass any ex post facto law or law impairing the obligation of contracts, and said act of 1907 was invalid and unconstitutional for the same reason.

13 2nd. The Court erred in affirming the judgment of Bibb Superior Court wherein the order of the Railroad Commission of Georgia and the act of the legislature aforesaid were held to be valid and binding and the contract between the plaintiff and defendant aforesaid was held to be invalid and not binding because of the provisions of article eight, article five, of the Constitution of the United States which provides that no person shall be deprived of his property without due process of law nor private property taken for public use without just compensation, the said contract is binding and valid and the said order and said act *is* void and unconstitutional.

R. D. FEAGIN,
O. C. HANCOCK,
R. S. WIMBERLY,
Attorneys for Plaintiff.

Filed in office Nov. 25, 1916. W. E. Talley, Deputy Clerk, Supreme Court of Georgia.

14 GEORGIA,
Fulton County:

Know all men by these presents that we, the Union Dry Goods Co., of Bibb County, Georgia, as principal, and United States Fidelity & Guaranty Co. of Baltimore, Md., as surety, are held and firmly bound to the Georgia Public Service Corporation in the full and just sum of $500.00 to be paid to the said Georgia Public Service Corporation, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally by these presents. Sealed with our seals and dated this the 27th day of November 1916.

Whereas, recently at a term of the Supreme Court of the State of Georgia in a suit depending in said Court between the Union Dry Goods Co. and the Georgia Public Service Corporation a judgment was rendered in favor of the defendant and said Union Dry Goods Co. having obtained a writ of error and filed a copy thereof in the

Clerk's office in said Court to reverse the judgment in aforesaid suit, and a citation directed to said Georgia Public Service Corporation citing and admonishing it to be and appear in the Supreme Court of the United States at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the said Union Dry Goods Co. shall prosecute its writ of error to effect; and answer all damages and costs if it fails to make its suit good,
15 then the above obligation to be void, else to remain in full force and virtue.

UNION DRY GOODS CO., [L. S.]
By R. D. FEAGIN, *Its Attorney at Law.*
UNITED STATES FIDELITY & GUARANTY CO. [L. S.]
FRANK H. REYNOLDS.

Attest as to Union Dry Goods Co.
W. J. ELLIS,
Notary Public, Bibb Co., Ga.

Attest as to U. S. Fidelity & Guaranty Co.
J. D. GREENE,
Notary Public, Fulton Co., Ga.

Approved Nov. 29th, 1916. Wm. H. Fish, Chief Justice, Supreme Court of Ga.

16 In the Supreme Court of the State of Georgia.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

The Clerk in making out the transcript for the writ of error to the Supreme Court of the United States in the above entitled cause will please include the following parts of the record:

1. The original petition together with all the exhibits thereto attached.
2. The amendment to the original petition filed April 18, 1914.
3. The amendment to the petition filed April 29, 1915.
4. The answer of the defendant with all the exhibits thereto attached.
5. The amendment to the answer filed April 18, 1914.
6. The amendment to the answer filed April 29, 1915.
7. The opinion and judgment of Bibb Superior Court rendered on the interlocutory hearing in said case.
8. The verdict and finding of Bibb Superior Court rendered in said case on May 6, 1915.
9. The judgment and decree of the Court rendered in Bibb Superior Court on May 6, 1915.

10. The bill of exceptions sued out to the Supreme Court of Georgia from the judgment of Bibb Superior Court rendered on May 6, 1915.

17 11. The opinion and judgment of the Supreme Court of Georgia rendered on the bill of exceptions sued out from the interlocutory hearing of said case.

12. The opinion and judgment of the Supreme Court of Georgia rendered on the bill of exceptions to the final judgment and decree in said case.

13. The petition for the writ of error.

14. The order allowing the writ of error.

15. The assignments of error.

16. The bond.

17. The original writ of error.

18. The original citation with acknowledgment of service thereon.

FEAGIN & HANCOCK,
R. S. WIMBERLY,
Attorneys for Plaintiff in Error.

P. O. address, Macon, Ga.

Due and legal service of the foregoing praecipe is hereby acknowledged and copy received.

This 22 day of November, 1916.

ELLIS & GLAWSON,
Attorneys for Georgia Public Service Corporation.

P. O. address, Macon, Ga.

Filed in office Nov. 25, 1916. W. E. Talley, Deputy Clerk, Supreme Court of Georgia.

18 GEORGIA,
Bibb County:

Be it remembered that on the 6th day of May, 1915, at the April Term, 1915, of Bibb Superior Court, before the Hon. H. A. Mathews, Judge of said Court presiding, there came on to be tried the case of the Union Dry Goods Company vs. The Georgia Public Service Corporation, the same being an equitable petition for relief. The parties in said case in open court waived a trial by jury and agreed to try all the issues of law and fact in said case before the court, and the court on said date, after said waiver and agreement, proceeded to hear said case on the pleadings and on the evidence submitted.

The following testimony was introduced by the plaintiff.

Mr. D. S. WAGNON sworn, testified as follows:

"The Union Dry Goods Company was not a party in any way to the hearing before the Railroad Commission, when the electric light rates in Macon were raised. I did not have any notice or order to participate in that hearing. I saw it in the papers. I do not exactly understand your question as to whether I wired Mr. J. Ellsworth

Hall to inform him that it was necessary for him to be ready, and as to whether or not Mr. Hall informed him that Mr. Robt. L. Berner, Mr. N. E. Harris, together with Mr. Wallace Miller, were representing generally the city of Macon, including the attorney, Mr. Water de Fore. I did not discuss sending anybody there to represent me. Mr. Juhan may have done so—I did not personally.

19 Yes, I knew these attorneys were contending for the maintainance of the contracts like mine, in other cases. I knew that these attorneys were before the Railroad Commission, representing other parties in the city, whether like our contract I did not know. In a general way, I knew they were lower rate contracts. I do not recollect consulting with them about incurring the expenses up there.

Plaintiff also introduced in evidence the following documentary evidence.

Affidavit of D. S. WAGNON which was properly entitled in the cause and conformed to the statute in such cases provided, and which was admitted without objection, and the material portions of which were as follows:

"That he is the Secretary and Treasurer of the Union Dry Goods Company, the plaintiff in this proceeding, and he knows and is acquainted with these facts stated in this affidavit, and that he is authorized to make this affidavit for said corporation. Deponent avers that the facts stated in paragraph four of the petition in this case are true, to wit, that the petitioner has, in good faith, at all times complied wih all the terms of the written contract between it and the defendant, a copy of which said contract is attached to the petition. Your petitioner shows that the facts stated in paragraph fifteen of the original petition are true, and that likewise the facts set forth in subdivision two of paragraph sixteen are true, and that the damages petitioner would sustain as the result of the non-

20 performance of the defendant's contract, would be uncertain and difficult of ascertainment. Deponent avers that, in addition to the increased cost of electric service it would be compelled to pay to another Electric Company furnishing said electric service, there would be a delay incident to the installing of such other services, during which time the business of petitioner would be seriously handicapped, impaired and damaged, in that it would be without lights, and without elevator service, and would be forced to suspend its business, or greatly cripple same, during the interval of replacing the service, to the injury and damage of the petitioner in a sum that is uncertain and difficult of ascertainment. Deponent avers further, that the electric service, which is the subject matter of the contract between the plaintiff and the defendant in said written contract, is property necessary to the purpose of the Union Dry Goods Company's organization, and is necessary for the successful and usual conduct of its trade and business, and the acquiring of said property contracted for in said written contract was

necessary for the legitimate execution of the purposes of petitioner's organization.

(Signed) D. S. WAGNON.

Sworn to and subscribed before me this 18th day of April, 1914.

(Signed) S. W. HATCHER,
Notary Public, Bibb County, Georgia."

"Plaintiff also introduced in evidence certified copy of its charter, granted to it by the Superior Court of Bibb County, Georgia,
21 on the 25th day of September, 1899, the material portions of which were, that the petitioners were incoporated under the name of the Union Dry Goods Company for a period of twenty (20) years, with the privilege of renewal at the end of that time, and the object of the corporation is the profit of its stockholders, and the business said corporation proposes to carry on, is that of selling dry goods and notions at wholesale or retail, or both if desired, including all such articles as are usually handled by dealers in dry goods, or such as may be, or may become appropriate in the business of such corporation, with all the right, powers and privileges usually incident to such business. The charter was granted for the purposes mentioned in the petition, together with all the rights, powers and pr-vileges, and subject to all the duties and restrictions provided by law in such cases.

Plaintiff also introduced in evidence certified copy of General Order No. 14 of the Railroad Commission of Georgia, as follows:

Railroad Commission of Georgia.

ATLANTA, December 23rd, 1909.

File No. 9162.

Circular No. 314 is hereby amended by substituting therefore General Order No. 14, which becomes effective this day, as follows:

General Order No. 14.

All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed by
22 this Commission, whether such rates are the result of voluntary action upon the part of any company, corporation or person subject to the jurisdiction of this Commission, or otherwise, are hereby established as the rates of the Railroad Commission of Georgia, and no such rates shall be discontinued nor raised without the consent of the Railroad Commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the Commission. And any and all facilities, privileges or service, now in effect or practiced, or hereafter made effective, extended or practiced, which give, grant, extend or allow patrons, shippers or other persons transacting business with said com-

panies, corporations or other persons as much or more of the privileges, facilities or service to which they are entitled by law or by any rule, regulation or order of this Commission, whether such privileges, facilities or service are given, granted, extended or allowed as the result of voluntary action upon the part of such companies, corporations or persons, or otherwise, are hereby established as the requirements of the Railroad Commission of Georgia, and no such privileges, facilities or service shall be discontinued without the consent of the Railroad Commission first being obtained, but all such privileges, facilities or service shall be given, granted, extended or allowed without hindrance, the same as other requirements of this Commission; provided that nothing herein contained shall operate as repealing in any way provisions of Passenger Rule No. 7.

H. W. HILL, *Chairman.*

23 CAMPBELL WALLACE, *Secretary.*"

Plaintiff closed.

Defendant offered in evidence over plaintiff's objection certified copies of two orders of the Railroad Commission of Georgia, the said orders being identical with the copies attached to the defendant's original answer, and marked Exhibit "A" and Exhibit "B."

Defendant closed.

After argument of counsel, the court on the 6th day of May, 1915, rendered a verdict and finding in said case for the defendant as follows:

"This case having been reached and called for final trial before the Court and Jury, and the parties thereto having in open court waived a trial by jury and agreed in open court to try all the issues of law and fact in said case before the court (H. A. Mathews, judge of said court presiding) and the Court under said waiver and agreement having proceeded with and concluded said trial and having reached the conclusion that under the evidence and the law applicable thereto the defendant is entitled to a verdict, the Court hereby finds for the defendant.

May 6th, 1915.

(Signed) H. A. MATHEWS,
J. S. C. M. C."

24 To this verdict and finding plaintiff in error then and there excepted and now excepts and assigns the same as error under the pleadings and the evidence in said case.

Be it remembered that subsequently thereto, on the 6th day of May, 1915, the court in said case rendered a decree and judgment based upon said verdict and finding as follows:

"The parties in the above case having in open court waived a trial by jury and agreed in open court to try all the issues of law and fact in said case before the Court (H. A. Mathews judge of said court pre-

siding) and the Court under said waiver and agreement having proceeded with and concluded said trial and having found a verdict for the defendant.

It is now adjudged and decreed by the court that the prayers of petition for specific performance and injunction and all other relief be and the same is hereby refused and denied and that the defendant do recover of the petitioner the sum of — dollars and — cents.

Decree signed this the 6th day of May, 1915.

H. A. MATHEWS,
J. S. C. M. C."

(Signed) DU PONT GUERRY,
Defendant's Attorney.

To this judgment and decree plaintiff in error then and there excepted and now excepts and assigns the same as error.

Plaintiff in error, the Union Dry Goods Company, who was the plaintiff in said suit in the court below, hereby assigns error
25 upon the verdict and finding of the court and upon the judgment and decree of the court rendered in said case, and says that the court erred in finding for the defendant, and in adjudging that the prayers of the petition for specific performance and injunction and all other relief should be refused and denied.

Plaintiff in error says that the court erred in the verdict rendered and in the judgment rendered, and in refusing to grant the prayers of the petition for specific performance and injunction and all other relief prayed for in the petition, and by refusing the relief prayed for upon each and every paragraph of the original petition filed on April the 13th, 1914, and upon each and every paragraph of the Amendment to the petition filed April the 18th, 1914, and upon each and every paragraph of the amendment to the petition filed April the 29th, 1915, and upon the petition as a whole as amended.

Plaintiff in error insists that the court erred in refusing the relief prayed for under the evidence and the pleadings in said case, and especially insist- that it was error to refuse the relief prayed for in view of the contentions of the plaintiff set forth in paragraphs 11, 12, 13, 14, 15, 16 and 17 of the original petition, and paragraphs 1, 2, 3, 4, and 5 of the Amendment to the petition filed April the 18th, 1914, and paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Amendment to the petition filed April the 29th, 1915.

Be it remembered further that during the trial of said cause plaintiff in error contends that the court erred in refusing to
26 allow in evidence certain testimony of W. J. Massee, a witness who was sworn for the plaintiff in the case, and placed upon the stand for the purpose of testifying in said case. Counsel for the plaintiff offered to prove by said witness and stated in his place that he expected to prove and could prove by said witness the following facts: that the witness W. J. Massee was President of the defendant company, The Georgia Public Service Corporation, at the time the contract in dispute was entered into between the plaintiff and the defendant; and that the plaintiff offered and expected to prove and could prove by the witness that the contract in dispute was entered

into between the contracting parties in good faith on both sides, and at the solicitation of The Georgia Public Service Corporation. That at the time the contract was executed the Georgia Public Service Corporation was making similar contracts, some even at lower rates than the rate named in the contract with the Union Dry Goods Company, with various large consumers of electrical current in the city of Macon. That the rate stated in the contract with the Union Dry Goods Company was a rate which afforded to the manufacturer, The Georgia Public Service Corporation a fair and reasonable profit for the services and electricity furnished. That during the month just prior to the time that the Georgia Public Service Corporation sold out to A. B. Leach & Company, which was in October 1913, that The Georgia Public Service Corporation made a profit in its business of 12 per cent during the previous month, and that this profit
27 was derived from service furnished to the large consumers similar to the Union Dry Goods Company.

The court on objection of defendant's counsel refused to allow plaintiff to interrogate said witness and to prove the aforesaid facts, stating that the evidence was irrelevant to the case, and sustaining the objections of defendant's counsel to said evidence.

To this ruling of the court plaintiff in error then and there excepted and now excepts and assigns the same as error, and says that the court erred in excluding said testimony from the case and erred in not admitting said testimony in evidence as plaintiff in error contends the same was relevant and admissible and would have tended to show that the rate named in the contract was a reasonable rate and a legal rate.

Be it remembered further that during the progress of said case, plaintiff in error contends the court erred in admitting in evidence over the objection of plaintiff's counsel made to the evidence at the time the certified copies of the two orders of the Railroad Commission of Georgia, which are attached to the original answer of the defendant in said case, and marked Exhibit "A" and Exhibit "B." Plaintiff objected to the evidence marked "Exhibit "A" upon the ground that the certified copy only fixed the maximum rate and did not provide or specify that there could be no other rate
28 charged than the rate fixed as the maximum rate, and that therefore it was irrelevant in determining the question involved in the case as to whether the contract in issue was a fair and reasonable contract or not, for the reason that the rate fixed in the order of the Railroad Commission could still be the maximum rate and yet not invalidate the lessor rate as fixed in the contract in issue.

Plaintiff in error objected to the introduction in evidence of the order of the Railroad Commission of Georgia, which is attached to the original answer of the defendant and marked Exhibit "B" upon the ground that it appeared to be an opinion rendered in a different case, an opinion rendered on the application of the Macon Railway & Light Company to increase its rate, and could not be binding or affect a contract made with the Georgia Public Service Corporation.

Plaintiff in error objected further to both extracts and both orders of the Commission, to wit, Exhibits "A" and "B" as attached to the

original answer of the defendant upon the ground that it appeared from the evidence in the case that the Union Dry Goods Company was not a party to any proceeding had before the Railroad Commission of Georgia on the hearing in which these orders and judgments were rendered, and therefore would not in law be bound by any judgment rendered there as affecting a contract previously entered into in good faith between the Union Dry Goods Company and the Georgia Public Service Corporation.

The court overruled each and all of these objections to the
29 orders of the Railroad Commission of Georgia above referred to, and admitted the same in evidence, to which ruling of the court plaintiff in error then and there excepted and now excepts and assigns the same as error, and says that the court erred in admitting the same in evidence, and erred in refusing to sustain the objections of plaintiff's counsel to said orders.

Plaintiff in error specifies the following portions of the record in said case as material to a clear understanding of the errors complained of in this Bill of Exceptions:

1st. The original petition in said case filed April the 13th, 1914.

2nd. The Amendment to the petition filed April the 18th, 1914.

3rd. The Amendment to the petition filed April the 29th, 1915.

4th. The answer of the defendant filed April the 18th, 1914, with all exhibits.

5th. The Amendment to the answer filed April the 18th, 1914.

6th. The Amendment to the answer filed April the 29th, 1915.

7th. The verdict and finding of the court rendered in said case on May 6th, 1915.

8th. The judgment and decree of the court rendered in said case on May 6th, 1915.

30 And now, within the time allowed by law comes the Union Dry Goods Company, and tenders this its Bill of Exceptions and prays that the same may be signed and certified as provided by law in order that the errors complained of may be considered and corrected.

FEAGIN & HANCOCK,
Attorneys for Plaintiff in Error.

P. O. Address, Macon, Ga.

31 GEORGIA.
Bibb County:

I do certify that the foregoing Bill of Exceptions is true, and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of Bibb County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified and certify the same as such, and cause the same to be transmitted to the next term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 26th day of May, 1915.

H. A. MATHEWS,
J. S. C. M. C.

Due and legal service and notice of the foregoing Bill of Exceptions and Writ of Error acknowledged, copy of same received, all other and further notice and service waived.

This 27th day of May, 1915.

DU PONT GUERRY,
ELLIS & GLAWSON,
Attorneys for Georgia Public Service Corporation, Defendant in Error.

Post Office Address, Macon, Ga.

32 Clerk's Office Superior Court.

GEORGIA,
Bibb County:

I, Robert A. Nisbet, Clerk of said Court, do certify that the foregoing 10 pages constitutes the original bill of exceptions in the within stated case, just as the same was filed in said Clerk's office.

Witness my official signature and seal of office this 2d day of June, 1915.

[SEAL.] ROBERT A. NISBET, *Clerk.*

Filed in office, 27 day of May, 1915. Robert A. Nisbet, Clerk.

33 (Endorsed:) No. 9. Macon Circuit, October Term, 1915. Union Dry Goods Co. versus Georgia Public Service Corporation. Bill of Exceptions. Filed in office June 4, 1915. W. E. Talley, D. C. S. C. Ga.

34 Bibb Superior Court, July Term, 1914.

Number 9.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

TRANSCRIPT.

35 GEORGIA,
Bibb County:

To the Superior Court of said County:

The petition of the Union Dry Goods Company, a corporation, shows the following facts:

1. That the Georgia Public Service Corporation is a corporation organized under the laws of Georgia, with its headquarters in Macon, Bibb, Georgia, and is subject to the jurisdiction of this Court.

2. Said Georgia Public Service Corporation, hereinafter called the defendant, is engaged in the manufacturing and furnishing to the public of electricity for manufacturing and lighting purposes in said State and County.

3. On the 18th day of July, 1912, your petitioner entered into a

written contract with the said defendant for electric service to be furnished petitioner at its place of business 552 to 560 Cherry Street, Macon, Georgia, for and during a term of five (5) years from said date, and at the rates and prices specified in said written contract. A copy of said contract is attached to this petition and made a part hereof, and marked exhibit "A."

4. Your petitioner shows that it has in good faith, at all times, complied with all the terms of its said written contract as insisted upon by the said defendant.

5. Your petitioner shows that the said defendant has complied in good faith with all the terms of said contract since the
36 same was executed up to the 10th day of April, 1914.

6. On said 10th day of April, 1914, the said defendant declined and refused to recognize said contract, and to be bound further by said contract, and refused to accept from petitioner the contract price for electricity furnished to petitioner by defendant at its place of business for the month of March, 1914.

7. Your petitioner shows that under the terms of its said contract with the defendant, the amount of electricity consumed by it during the month of March, 1914, amounted to One Hundred Thirty & 52/100 ($130.52) Dollars net, if paid on or before the 10th day of April, 1914.

8. Your petitioner shows that on the 10th day of April, 1914, they tendered to said defendant the net amount due under the contract aforesaid, and under the rules and regulations of said defendant company, to-wit: One Hundred and Thirty & 52/100 ($130.52) Dollars in cash to said defendant, and to its Secretary and Treasurer Mr. Anderson, who was authorized to receive and receipt for said money, and that said tender was refused, the said defendant declining to accept the contract price for said electricity furnished, and demanding of petitioner the sum of One Hundred Sixty-two & 54/100 ($162.54) Dollars, being an increase of Thirty-two & 02/100 ($32.02) Dollars in the amount demanded over and above the amount justly due by petitioner to said defendant for electricity furnished.

9. Your petitioner shows that this demand on the part of
37 said defendant of an excessive amount for electricity furnished, and their refusal to recognize and abide by the written contract existing between them and petitioner, is arbitrary, unjust, in bad faith, and without any authority in law or in equity.

10. Petitioner attaches hereto the bills of said defendant rendered to petitioner for the month of March, 1914, showing the excessive charges over and above the charges stipulated and agreed to in the written contract above referred to. These bills are marked Exhibits "B" and "C," and are made a part of this petition.

11. Your petitioner avers that said arbitrary and excessive rates, which are in violation of petitioner's rights under their written contract aforesaid, purport to — based upon certain orders of the Railroad Commission of Georgia; but petitioner avers that if there are any such orders of the Railroad Commission of Georgia, establishing said rates as published by said defendant on the back of said bills

hereto attached, that said rates are not binding upon this petitioner, and cannot be effective to abrogate and render null and void the rights of petitioner under the written contract hereto attached, which was executed prior to the establishment of said rates by the Railroad Commission of Georgia, if such rates were in fact, established as claimed by the defendant in the printed form on the back of its bill attached to this petition.

12. This is true for the reason that said rates, if established as claimed by the defendant, whether by authority of the Rail-
38 road Commission or by authority of the Legislature of Georgia, establishing the Railroad Commission and giving it the power to fix rates, would be in violation of Article 1, Section 10, of the Constitution of the United States, which limits the power of individual states to pass any bill of attainder ex post facto law, or law impairing the obligation of contracts. Said rates if established as claimed by defendant subsequent to the execution of petitioner's contract, would constitute both an ex post facto law, and also a law impairing the obligation of contracts.

13. Said rates as contended for by defendant and said orders of the Railroad Commission of Georgia, establishing said rates, and the Act of the Legislature of Georgia of 1907, page 72, Section 6, defining the jurisdiction of the Railroad Commission, if this Act be construed by the defendant to empower the Railroad Commission to abrogate by its order an existing contract, as to the rates for electric services, are each and all unconstitutional, null and void for the reason that said rates, said orders, and said Act of the Legislature of Georgia is in conflict with and — violation of Article 1, Sec. 3, paragraph 2, of the Bill of Rights of the Constitution of the State of Georgia, which prohibits the passage of any ex post facto law, retroactive law, or law impairing the obligation of contracts.

14. Your petitioner shows that it has a property right in the contract with said defendant hereto attached, and that if the con-
39 tentions of the defendant *is* justified by any orders of the Railroad Commission of Georgia, and by said Act of the Legislature of Georgia, creating the Railroad Commission, that petitioner's private property would be taken and damaged for public purposes without just and adequate compensation being first paid, the said defendant being engaged as a public utility corporation in furnishing electric power for lighting and commercial purposes to the public for compensation, and the said rates and orders relied on by the defendant, if correctly stated by the defendant, being rates and orders passed by the Railroad Commission of Georgia for the benefit of the public. Said rates and orders of the Railroad Commission of Georgia, if established as contended for by the defendant, and said Act of the Legislature of Georgia, defining the jurisdiction of the Railroad Commission referred to above, by virtue of its said rates, were established and said orders were passed in violation of Article 1, Section 3, paragraph 1, of the Constitution of the State of Georgia which declares that private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.

15. Your petitioner shows that if the defendant be permitted to abrogate said contract, and to force — to abide by the terms of said contract, that petitioner's damages will be irreparable, and will be such damages, as, if recoverable at law, would not be adequate compensation for the non-performance of the contract.

40 16. Petitioner shows that its damages which would flow from the defendant's breach of this contract, cannot be adequately compensated at law for the following reasons:

1st. Petitioner's damages would be irreparable.

2nd. Its damages resulting from the non-performance of the contract would be uncertain and difficult of ascertainment.

3rd. The thing contracted for by petitioner has intrinsic value, in that petitioner is conducting a large dry goods business, occupying three floors on the premises referred to above, employing approximately one hundred and fifty employees, and conducting its business, to a large extent, during certain hours of the day and night, when it is absolutely necessary to be provided with an abundance of artificial light; & to operate its elevator system freight & passenger, and, to permit the defendant to refuse to abide by the terms of said contract, and to discontinue the electric services to petitioner, would be to deprive petitioner of this amount of its business, and greatly handicap and damage the operation and conduct of said business.

4th. Petitioner shows that the article contracted for is unique of its kind, being electricity, and cannot be readily reproduced or supplied, and that petitioner could not procure or replace *his* rights under said contract at the same price contracted for in said Agreement from any one else.

41 5th. Said defendant has a rule or regulation which was in existence at the time of the execution of said contract, that if its bills for electric service were not paid within a reasonable time that it would discontinue service and cut off the current from the consumer.

17. The premises considered, your petitioner shows that if the relief prayed for in this petition is not granted to petitioner, that the said defendant will discontinue its services to petitioner without any electric lights with which to conduct and operate its business; and that in this event the damages of petitioner would be irreparable, and would be such damages that, even if recoverable at law, would not be an adequate compensation for the non-performance of the contract.

Wherefore, The premises considered, and expressly waiving discovery, petitioner prays:

1st. That it may have from this Court a decree of specific performance against the defendant, requiring it to specifically perform, abide by and carry out the terms of its written contract with petitioner, said contract being attached as a part of this petition.

2nd. That pending the final hearing of this cause, said defendant be restrained and enjoined from abrogating any of the terms of said written contract, and that it be re-trained and enjoined from interfering with, in any way, the electric service now furnished to petitioner by said defendant *as* its said place of business, either in the

way of cutting off said current, or in declaring the same
42 void in attempting to collect charges for same over and above the contract rates stipulated in said contract; or in any other way whatsoever, interfering with, molesting, or hindering petitioner in the full, free and complete exercise of all its rights under said written contract.

3rd. Petitioner prays a temporary restraining order as above requested against said defendant until the interlocutory hearing of this proceeding, and prays that the same may be assigned for an interlocutory hearing on some day to be fixed by the Court, and that the defendant *by* them restrained and enjoined as prayed for in this petition until the final hearing of said cause before a jury.

Wherefore, The petitioner prays, the premises considered, that process may issue in terms of the law directed to the said defendant, requiring it to be and appear at the next term of Bibb Superior Court, to answer this complaint.

FEAGIN & HANCOCK,
Petitioner's Attorneys.

GEORGIA,
Bibb County:

Personally appeared before me, an officer of said State and County, duly authorized by law to administer oaths, D. S. Wagnon, an officer and agent of The Union Dry Goods Company, plaintiff in this case, who, on oath, deposes and says, that he is authorized by law to make this affidavit for said corporation, and that the facts stated in the foregoing petition are true, and that the legal conclusions which are stated and set forth in said petition, he is ad-
43 vised, and believes are true.

D. S. WAGNON.

Sworn to and subscribed to before me this 11th day of April, 1914.

O. H. CABANISS,
Notary Public, Bibb County, Ga.

The foregoing petition read, considered and ordered filed. It is ordered that the defendant, the Georgia Public Service Corporation, show cause before me on the 18th day of April, 1914, why the prayers of said petition should not be granted. Ordered further, that until the interlocutory hearing of this proceeding that the said defendants, its agents and employees, and all others acting for it, and in its behalf, be restrained and enjoined as prayed for in said petition from interfering with the electric service of the plaintiff at its place of business described in the petition, unless the plaintiff shall fail and refuse, upon demand, to pay the amounts due for service rendered by the defendant in accordance with the contract set forth in this petition between the plaintiff and the defendant, and from cutting off said electric current, and from attempting to collect any charges for electricity furnished the plaintiff at said

place in excess of the charges stipulated in the written contract between the parties.

At Chambers this 11th day of April, 1914.

H. A. MATHEWS,
J. S. C. M. C.

44 (Copy.)

Contract for Electric Service Between Georgia Public Service Corporation and the Union Dry Goods Company.

This contract entered into on the 18th day of July, 1912, by and between the Georgia Public Service Corporation, of the first part, hereinafter for brevity called the "Company," and the Union Dry Goods Company, of the second part, hereinafter for brevity called the "Consumer."

Witnesseth, That the Consumer requests and authorizes the said Company to connect its wires with and supply electric current for lights and power to the building of the Consumer, 552 Cherry Street, for all the lights and power to be used therein. The Company hereby agrees to furnish the Consumer electric current for lighting and power and to connect its wires with the wires of the Consumer as soon as the plant of said Company, now under construction, is in operation, between October 1st and November 1st, 1912.

2. The Consumer covenants and agrees to use, and the Company agrees to furnish, subject to the terms and conditions hereinafter set forth, (and which are hereby understood by both parties to be made a part of this agreement), electric current by the Company, for said electric lights and power for a term of five years from the date of this contract.

45 3. The said Consumer agrees to pay the Company for said electric current as follows: For, lights and power, supplied through meter, three cents (3 cts.) per kilowatt hour.

4. It is further understood and agreed by both parties hereto that the said Consumer authorizes the said Company to set up and maintain in a suitable place on said premises such meters and other electric appliances necessary to supply and measure said electric current. The Consumer, however, agrees to furnish the necessary transformers for any alternating current motors which he may install in the future.

5. The said Consumer further agrees to provide for and protect said meters, wires and appliances, installed by the Company, in and upon the said premises, from injury and damage.

6. It is further understood and agreed by both parties hereto that the meters, switches, wires, poles, cross bars, insulators and light transformers and all other appliances installed or set up on said premises at said Company's expense are not sold under this contract, but shall be and are to remain the property of said Company.

7. It is further understood and agreed by both parties hereto that the Company is hereby the supplier of electric current deliverable where the wires of the Consumer join the wires of the Company,

and the said Company is not responsible for damages to the apparatus or other property upon said premises, and the said Company is not and shall not be responsible for any damage
46 due to the wear and tear or defect of the installation.

8. It is further understood and agreed by both parties hereto*fore* that this contract shall not be valid or binding upon said Company until accepted and executed by its proper Executive officers, and shall not be modified or affected by any promise, agreement or representation of any agent or employee of the Company, unless incorporated in writing into this agreement, before such acceptance and execution.

Witness our hands and seals this 18th day of July, 1912.

(Signed) GEORGIA PUBLIC SERVICE CORPORATION,
By W. J. MASSEE, *President.*

(Signed) THE UNION DRY GOODS COMPANY,
By W. J. JUHAN, *President.*

Attest:

(Signed) JAMES L. ANDERSON,
Secretary.

Union Dry G'ds Co.
Address, Cherry St.

No. 441.

Union D. G'ds Co.
March, 1914. No. 441.

To Georgia Public Service Corporation, Grand Building, Dr.

Present Meter Read	4585
Last Meter Read	483

Over.

		Per K. W.		
Consumption K. W.	4102	At 157.62	Amount	157.62
			Balance	
			Total	

10 per cent. discount if paid by the 10th.
No discount after the 10th.
All bills are payable at the Company's Office between the 1st and 10th of the month. Please make early settlement.
47 Phone 13 or 50.

Flat	
Fans	
Previously due	
Total	

(Back.)

Rates for Electric Service.

Official orders of the Railroad Commission of Georgia, dated February 24th, 1914, and March 10th, 1914, established gross and net rate for the Georgia Public Service Corporation to become effective March 1st, 1914, as follows:

Rates for Commercial and Residence Lighting Service.

For	the	first	50	K.	W.	Hours	per	month	.....	10¢	gross	per	K.	W.	H.
"	"	next	50	"	"	"	"	"	.....	7.777¢	"	"	"	"	"
"	"	"	100	"	"	"	"	"	.....	6.666¢	"	"	"	"	"
"	"	"	300	"	"	"	"	"	.....	5.555¢	"	"	"	"	"
"	"	"	500	"	"	"	"	"	.....	4.444¢	"	"	"	"	"
"	"	"	4000	"	"	"	"	"	.....	3.333¢	"	"	"	"	"
"	all	over	5000	"	"	"	"	"	.....	2.222¢	"	"	"	"	"

10% discount allowed if paid within 10 days from date of bill.
Minimum bill $1.00 net per month.

Rates for Commercial Power.

For	the	first	100	K.	W.	Hours	per	month	.....	5.555¢	gross	per	K.	W.	H.
"	"	next	400	"	"	"	"	"	.....	3.333¢	"	"	"	"	"
"	"	"	500	"	"	"	"	"	.....	2.777¢	"	"	"	"	"
"	"	"	1500	"	"	"	"	"	.....	2.222¢	"	"	"	"	"
"	"	"	2500	"	"	"	"	"	.....	1.944¢	"	"	"	"	"
"	all	over	5000	"	"	"	"	"	.....	1.666¢	"	"	"	"	"

10% discount allowed if paid within 10 days from date of bill.
Minimum bill $1.00 net per month for 2 H. P. or less connected over 2 H. P. 50¢ net per month H. P. connected.

To assist customers in figuring their bills the following examples are given showing the method of applying the above rates:

Example No. 1—Lighting Service.

A monthly consumption of 65 K. W. Hours is figured as follows:

50 K. W. Hours at 10¢	$5.00
15 " " " " 7.777¢	1.17
65 K. W. Hours. Gross Bill	6.17
Less 10% discount for payment within 10 days from date of bill	.62
Net Bill	$5.55

Example No. 2—Lighting Service.

A monthly consumption of 650 K. W. Hours is figured as follows:

50 K. W. Hours at 10¢	$5.00
50 " " " " 7.777¢	3.888
100 " " " " 6.666¢	6.666
300 " " " " 5.555¢	16.665
150 " " " " 4.444¢	6.666
650 K. W. Hours. Gross Bill	38.88
Less 10% discount for payment within 10 days from date of bill	3.88
Net Bill	$35.

It is suggested that consumers learn to read their meters. A book of instructions will be furnished upon application at the Company's office.

Union D. G'ds Co.
Address, Cherry St.

4—830

No. 1296.

Union D. G'ds Co.
March, 1914. No. 1296.

To Georgia Public Service Corporation, Grand Building, Dr.

Present Meter Read	6086			
Last Meter Read	5354	over.		
Consumption K. W.	732	Per K. W. 22.98	Amount	22.98
			Balance	....
			Total	....

10 per cent discount if paid by the 10th.

No discount after the 10th.

All Bills are payable at the Company's Office between the 1st and 10th of the month. Please make early settlement.

Phone 13 or 50.

Flat	....
Fans	....
Previously due	....
Total	....

(Back.)

Rates for Electric Service.

Official orders of the Railroad Commission of Georgia, dated February 24th, 1914, and March 10th, 1914, established gross and net rate for the Georgia Public Service Corporation to become effective March 1st, 1914, as follows:

Rates for Commercial and Residence Lighting Service.

For	the	first	50	K.	W.	Hours	per	month	.....	10¢	gross	per	K.	W.	H.
"	"	next	50	"	"	"	"	"	.....	7.777¢	"	"	"	"	"
"	"	"	100	"	"	"	"	"	.....	6.666¢	"	"	"	"	"
"	"	"	300	"	"	"	"	"	.....	5.555¢	"	"	"	"	"
"	"	"	500	"	"	"	"	"	.....	4.444¢	"	"	"	"	"
"	"	"	4000	"	"	"	"	"	.....	3.333¢	"	"	"	"	"
"	all	over	5000	"	"	"	"	"	.....	2.222¢	"	"	"	"	"

10% discount allowed if paid within 10 days from date of bill.

Minimum bill $1.00 net per month.

Rates for Commercial Power.

For	the	first	100	K.	W.	Hours	per	month	.....	5.555¢	gross	per	K.	W.	H.
"	"	next	400	"	"	"	"	"	.....	3.333¢	"	"	"	"	"
"	"	"	500	"	"	"	"	"	.....	2.777¢	"	"	"	"	"
"	"	"	1500	"	"	"	"	"	.....	2.222¢	"	"	"	"	"
"	"	"	2500	"	"	"	"	"	.....	1.944¢	"	"	"	"	"
"	all	over	5000	"	"	"	"	"	.....	1.666¢	"	"	"	"	"

10% discount allowed if paid within 10 days from date of bill. Minimum bill $1.00 net per month for 2 H. P. or less connected over 2 H. P. 50c. net per month H. P. connected.

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A monthly consumption of 65 K. W. Hours is figured as follows:

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15 " " " " 7.777¢	1.17
65 K. W. Hours. Gross Bill	6.17
Less 10% discount for payment within 10 days from date of bill	.62
Net bill	$5.55

Rates for Electric Service.—Continued.

49

Example No. 2—Lighting Service.

A monthly consumption of 650 K. W. Hours is figured as follows:

50 K. W. Hours at 10¢	$5.00
15 " " " " 7.777¢	3.888
100 " " " " 6.666¢	6.666
300 " " " " 5.555¢	16.665
150 " " " " 4.444¢	6.666
650 K. H. Hours, Gross Bill	38.88
Less 10% discount for payment within 10 days from date of Bill	3.88
	$35.

It is suggested that consumers learn to read their meters. A book of instructions will be furnished upon application at the Company's office.

STATE OF GEORGIA,
Bibb County:

UNION DRY GOODS CO.
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Injunction.

To the Sheriff of Bibb County, Greeting:

The Defendant is hereby required personally, or by Attorney, to be and appear at the next Superior Court to be held in and for said County on the Third Monday in July next, then and there to answer the plaintiff's demands in an action of Injunction as in default thereof the Court will proceed as to justice shall appertain.

Witness the Honorable H. A. Mathews, Judge of said Court, this 13th day of April, 1914.

ROBT. A. NISBET, *Clerk.*

GEORGIA,
Bibb County:

I have this day served the defendant, Georgia Public Service Corporation, a corporation, by handing a true copy of the
50 within petition, order and process to J. L. Anderson, its secretary and Treasurer, and officer in charge. This April 13th, 1914.

WILSE BIRDSONG,
Deputy Sheriff.

Filed in Office, this 13th day of April, 1914. Robt. A. Nisbet, Clerk.

51 Bibb Superior Court, July Term, 1914.

No. —.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Equitable Petition.

Amendment to Petition.

Now comes the plaintiff and amends its petition in the above stated case, by adding thereto the following:

1. Petitioner is a corporation organized and chartered under the laws of Georgia, and as such is a resident of the State of Georgia and of the United States.

2. Petitioner avers that the orders of the Railroad Commission of Georgia, relied on by the defendant in its answer, and referred

to in the petition in this case, are illegal, unconstitutional, null and void, and are not binding upon the parties to this case for the following additional reasons to those set out in the original petition:

(*a*) The written contract relied on by petitioner was entered into voluntarily by petitioner and defendant before said orders of the Railroad Commission were passed. Said orders were secured and invoked by the defendant on its own petition, and after it had voluntarily entered into a solemn written contract with petitioner. Petitioner avers that said defendant is, in law, estopped from itself invoking an order from the Railroad Commission, which would abrogate its voluntary solemn written contract.

52 (*b*) The Railroad Commission of Georgia was without authority, in law, to promulgate and pass said orders, or to make them binding upon petitioner, for the reasons that sections five and six of the Act of the Georgia Legislature of 1907, pages 74 and 75, which define the powers and jurisdiction of the Railroad Commission of Georgia, and which are codified in Sections 2662-2663 of the Code of 1910, are each unconstitutional, null and void, because the same are in conflict with Article 1, Section 4, paragraph 1, of the Constitution of the State of Georgia, "which declares that laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights shall be varied in any particular case by special legislation, except with the free consent in writing of all persons to be affected thereby." There being at the time of the passage of this Act in existence a general law, codified in Section 2216 of the Code, defining the common powers of all corporations, and authorizing all corporations in common to sue and be sued, to purchase and hold real and personal property such as is necessary to the purpose of their organization, and to do all such acts as are necessary for the legitimate execution of this purpose. At the time petitioner's contract was entered into with the defendant, the property contracted for in said written contract, was property necessary to the purpose of petitioner's organization, and for the successful and usual con-

53 duct of its trade and business, and the acquiring of said property contracted for in said written contract was necessary for the legitimate execution of the purposes of petitioner's organization; there being also a general law codified in Sec. 2234 of the Code permitting corporations creating electricity to make contracts and lease power etc. to any person or corporation.

(*c*) Said Act of the Legislature, Sections 5-6, aforesaid, if enforced in their plain meaning, would contravene the law of Georgia, that the Code Section above cited, 2216, defining the common powers of corporation- shall have a uniform operation throughout the State, for the reason that if said act is enforced, it would curtail the power of making contracts and of holding property necessary to the purpose of their organization, and of doing Acts necessary for the legitimate execution of the purposes of their organization of those corporations which are by this Act made subject to the jurisdiction of

the Railroad Commission of Georgia, and of those corporations contracting with them, and would not curtail the like rights and powers under the general law of those corporations which are not made subject to the jurisdiction of the Railroad Commission of Georgia.

(*d*) Said sections of the Act of 1907 are also unconstitutional, null and void, for the reason that they violate the constitution inhibition contained in Article 1, Section 4, paragraph 1, of the Constitution of Georgia, against the enactment of a special law and
54 against the passage of special legislation varying a general law affecting private rights, for the reason that petitioner is affected by said special legislation, and has not given its free consent in writing to said special legislation. Said Acts of the Legislature are special legislation for the further reason that they do not attempt to place under the jurisdiction of the Railroad Commission of Georgia all public utility corporations, but only single out and select certain classes or kinds, leaving various other public utility corporations not subject to the jurisdiction of the Railroad Commission of Georgia, and free to do business under the general corporation law of the State.

(*e*) Said Acts are null and void, and said orders of the Railroad Commission of Georgia, based thereon, are null and void, for the reason that nowhere in said Section is the Railroad Commission of Georgia expressly given the power and authority to prescribe the minimum rates for service for electric light and power corporations, furnishing service to the public.

(*f*) Said Acts are further null and void and violative of the constitutional inhibition against special legislation referred to above, for the reason that Section 5 of said Act makes an exception as to valid, subsisting contracts in existence between a municipal corporation and the public utility corporation, and makes an exception as to the existing ordinances of a municipal corporation and provides that such rights of a municipal corporation shall not be affected
55 or repealed, but does not make a similar exception as to other corporations dealing with public utility corporations, and as to their contracts when such other corporations are not municipalities.

3. Petitioner's contract with the defendant which is relied on in this case, was not a discriminatory contract but was a voluntary contract; solicited by the defendant, when it had no fixed schedule of rates filed with or prescribed by the Railroad Commission of Ga., and was one of others entered into by the defendant with consumers in the city of Macon at the same rates with consumers who were in the same class and business with petitioner as related to the electrical service of the defendant.

4. Said orders of the Railroad Commission of Georgia, and said Act of the Georgia Legislature of 1907, Sections 5-6 by virtue of which the orders of the Railroad Commission were passed, are both unconstitutional, null and void, because the same are in conflict with and violate that Section of the Constitution of the United States known as Article 8, relative to amendments, and Article 5 of said amendments, which provides that no person shall be deprived

of liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

5. Said orders of the Railroad Commission of Georgia fixing the rates relied on by the defendant as abrogating its contract with petitioner, and the Act of the Georgia Legislature of 1907,
56 Sections 5-6, empowering said Railroad Commission to fix said rates, are each unconstitutional, null and void, for the reason that they conflict and violate the following Sections of the Constitution of the State of Georgia:

(*a*) Article 1, Section 1, Paragraph 2, providing that protection to person and property is the paramount duty of government, and shall be impartial and complete.

(*b*) Article 1, Section 1, Paragraph 3, providing that no person shall be deprived of life, liberty or property except by due process of law.

FEAGIN & HANCOCK,
Petitioner's Attorneys.

GEORGIA,
Bibb County:

Personally appeared before me the undersigned, D. S. Wagnon, an officer and agent of the plaintiff corporation, who on oath deposes and says that he is authorized by law to make this affidavit for said corporation, that the facts stated in the foregoing amendment are true. Petitioner is advised and believes that the legal conclusion- stated in said amendment are correct.

D. S. WAGNON.

Sworn to and subscribed to before me, this 18th day of April, 1914.

S. W. HATCHER,
Notary Public, Bibb County, Georgia.

The foregoing Amendment read, considered, allowed and ordered filed as a part of the record in said case, this 18th day of April, 1914.

H. A. MATHEWS,
J. S. C. M. C.

Filed in office, April 18, 1914. Robt. A. Nisbet, Clerk.

57 Bibb Superior Court, July Term, 1914.

No. —.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Now comes the plaintiff, the Union Dry Goods Company, and by leave of the court first had amends the original petition in the above entitled cause, and for grounds of amendment, says:

1. That the contract which the Georgia Public Service Corporation the defendant voluntarily entered into with the plaintiff as set forth in said original petition, the said defendant Company now claims the right and privilege of abrogating and cancelling under and by virtue of an order of the Railroad Commission of Georgia, granted on the — day of —— 1914, on the application of said defendant company to said Commission for authority to increase its rates for light and power within the city of Macon.

2. Plaintiff avers that said contract was not made and executed by and between said defendant Company as a result of any subterfuge or fradulent conduct on the part of your plaintiff with said defendant Company, and that said contract was not obtained by any secret understanding or device, and was not discriminatory in character nor did the execution of said contract affect injuriously the welfare of the general public.

3. Plaintiff avers that on the contrary at the time said contract was made and executed, said defendant company was not only offering similar contracts to all consumers of electric light and
58 power in the city of Macon, who were in the same class as the plaintiff, but was actually soliciting from consumers and the public generally, contracts identical with the contract which plaintiff holds for similar classes of service.

4. Plaintiff avers that under general order No. 14 of the Railroad Commission of Georgia, rates specified in the contract which plaintiff holds, were at the time the contract was executed, the established rates of the Railroad Commission of Georgia, and that such contract at the time of its execution was neither discriminatory or otherwise unlawful.

5. Plaintiff avers further that the rate fixed in said contract was a reasonable rate, paying to the defendant Company a fair profit for the services rendered.

6. Plaintiff avers further that the Railroad Commission of Georgia had no power or authority under the law to order the abrogation or cancellation of plaintiff's contract, or to grant to said defendant company the privilege of declaring said contract unjustly discriminatory, and therefore void.

7. Plaintiff avers that the action on the part of said Railroad Commission of Georgia in granting said order, cancelling said contract was, and is, in violation of paragraph one, section 10, article one, of the Constitution of the United States, which forbids any State to pass any law impairing the obligation of an existing contract.

FEAGIN & HANCOCK,
Plaintiff's Attorneys.

59 GEORGIA,
Bibb County:

Personally appeared before me the undersigned, a Notary Public in and for said State and County, D. S. Wagnon, who on oath deposes and says that he is Secretary and Treasurer of the Union Dry Goods

Company, plaintiff in the foregoing suit, and that he is authorized to make this affidavit, and that the facts stated in the foregoing amendment are true, and that the legal conclusions which are stated and set forth in said petition he is advised are true.

D. S. WAGNON.

Sworn to and subscribed before me this 29th day of April, 1915.

JULIAN F. URQUHART,
Notary Public, Bibb County, Georgia.

The foregoing amendment allowed this 29th day of April, 1915.

H. A. MATHEWS,
J. S. C. M. C.

Filed in office, April 29, 1915. Rob't A. Nisbet, Clerk.

60 Bibb Superior Court, July Term, 1914.

Number 9.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Petition for Injunction, etc.

And now comes the Defendant by its Attorneys, Guerry & Son, and by way of answer to the petition in the above stated case says:

1.

Defendant admits paragraphs 1, 2, and 3 of said petition.

2.

Defendant says in answer to paragraph 4, that petition- may have complied with the terms of the contract therein referred to as therein stated, up to the first day of March last, but that on said day, said contract in so far as the rates specified therein were concerned, had terminated as hereinafter shown, which fact is well known to petitioner and was at the time when it filed said petition.

3.

Defendant admits paragraph 5 to the effect that petitioner complied with the terms of the contract as long as the same was entirely of force, namely, up to the first day of March last, when the said contract ceased to exist in so far as the rates specified therein were concerned, as is well known by petitioner and was at the time of the filing of said petition.

4.

Defendant admits paragraph 6, and says that it refused the
61 said contract price for electricity furnished by defendant to petitioner as stated, because there was no such contract price as petitioner then well knew and now well knows, said alleged contract price to the knowledge of petitioner having ceased to exist with the expiration of the month of February last.

The petitioner justly owed the defendant the sum of One Hundred and Sixty Two Dollars and Fifty Four Cents for current during the month of March last and offered to pay in full of its bill for that month only, the sum of One Hundred and Thirty Two Dollars and Fifty Two Cents.

Defendant says that if it had complied with petitioner's unjust demand, it would not only have lost the sum of thirty-two dollars and two cents, which was the balance of its bill, *the* petitioner would have deprived defendant of said sum without due process of law and both petitioner and this defendant would have by such transaction violated the law of the State, as will hereafter be more fully shown.

5.

In answer to paragraph 7, defendant says it may be true as therein alleged that under the terms of the alleged contract, the amount of petitioner's bill was only One Hundred and Thirty Dollars and fifty-two cents *not* for the month of March, but such contract did not exist in so far as the rates specified therein were concerned for said month as petitioner then knew and now knows.

Under the rates duly established for said month and there-
62 after until otherwise provided by the Georgia Railroad Commission for services rendered and current supplied by defendant to petitioner, the petitioner was indebted to defendant the sum of One Hundred and Sixty-Two Dollars and Fifty-four cents net, or One Hundred and Eighty Dollars and Sixty cents gross, upon refusal to pay the net amount, and petitioner this amount as well as the said net amount refused to pay and still refuses to pay and continues to use defendant's current, contrary to law and equity.

6.

In answer to paragraph 8, defendant says that its Treasurer, Mr. J. L. Anderson, did refuse the said tender of One Hundred and Thirty Dollars and Fifty-two cents, but that he did so because it was not the full amount due. He offered to accept the sum of One Hundred and Sixty-two Dollars and Fifty-four cents which was the full amount then due provided the same had been then paid, but that the petitioner refused to pay the amount and thereupon on the expiration of the tenth day of the present month, the sum of One Hundred and Eighty Dollars and Sixty cents became due and is still due and unpaid, as defendant will hereafter plainly show.

The defendant denies all the other allegations in said paragraph 8.

7.

Defendant denies paragraph 9.

63 8.

Defendant admits that the bills for March referred to in paragraph 10 and exhibited to the petition as Exhibits B and C are correct and were duly rendered for the month of March, 1914.

But defendant denies that they exceed the true amount chargeable to petitioner under the Law, or the value of the service rendered and the value of the current supplied by defendant to petitioner for that month and defendant again denies the existence of the contract which petitioner makes the basis of its calculation and complaint, in so far as the rates specified therein are concerned.

9.

In answer to paragraph 11, defendant denies that its rates as charged by petitioner are excessive or in violation of its rights under the said contract; denies the existence of any such contract in so far as the rates therein specified are concerned, and says said rates charged are based as they purported to be upon certain orders of the Georgia Ralroad Commission and that said orders do in fact exist and that the rates fixed by said orders are binding upon petitioner and are effective to abrogate and render null and void the alleged rights of petitioner under the said contract, in so far as the rates therein specified are concerned.

Defendant attaches hereto copies of said orders as exhibit "A," praying the usual reference thereto.

64 10.

Defendant denies paragraph 12 and says that said order and rates as established, are both Lawful and Constitutional and are liberal so far as the petitioner is concerned and moderate so far as the defendant is concerned.

11.

Defendant denies paragraph 13.

12.

Defendant denies paragraph 14, in so far as petitioner claims any property right to the rates specified in said contract, and otherwise denies said paragraph entirely.

13.

Defendant denies paragraph 15.

14.

Defendant denies paragraph 16 avering that there is no such contract to be breached in so far as the rates therein specified are concerned and that there could arise no damages on account of such contract.

Defendant denies subdivisions 1 and 2 of said paragraph.

In answer to subdivision 3, defendant says it denies again the existence of petitioner's said contract in so far as the rates therein specified are concerned. It admits that its service is of great and intrinsic value to petitioner as shown by petitioner, and says
65 the same is worth more to petitioner than it is required to pay under the rates established by the Commission.

Defendant admits said sub-division 4 of said paragraph and also subdivision 5.

15.

Defendant answering paragraph 17 admits that if petitioner persists unreasonably as well as unjustly in its refusal to pay its bill, this defendant will be forced to discontinue its service and supply of current, in pursuance of its legal and moral right to do so, and as a matter of fairness and justice to its patrons who pay their bills and as a matter of duty to the public.

If the damages to petitioner in that event would be irreparable as set forth in said paragraph, the fault would be that of the petitioner and not of this defendant.

The defendant further answering the said petition says:

That it is a public utility corporation, was organized as such in 1912, under the laws of Georgia and has been doing business as such exclusively in said State and in said County of Bibb.

That when the said contract with petitioner was signed the rates therein specified were made extremely low to meet the rates of the Macon Railway & Light Company, another public utility corporation organized under the laws of said State and also doing business exclusively therein and in said County of Bibb, that under and because of the competition then ensuing it soon became certain
66 that the business of neither could be long continued because notwithstanding the proper economy practiced by both, the income of each company was ruinously less than its operating expenses.

That thereupon and in order to save themselves from insolvency and to enable them to furnish the public with light and power and to secure sufficient receipts to pay operating expenses and some net income, they severally applied to the Railroad Commission of Georgia, the tribunal established and empowered by the Constitution and laws of the State to investigate and determine such questions to reasonably and justly increase their rates and said Commission after full investigation, and hearing evidence and argument from all parties at interest desiring to be heard, and after mature consideration, on the 24th day of February, 1914, ordered that on and after March 1st,

1914, and until the further order of said Commission certain schedules of rates should be the maximum schedules of rates to be charged by this defendant for the classes of service indicated in said order as will fully appear from said order itself as hereto exhibited by Exhibit A, already referred to in this answer and made part thereof.

This defendant further answering says that while the said orders of the said Commission establishing maximum rates for this defendant already referred to and shown by said exhibit were of themselves under the Law effective to abrogate the rates specified in petitioner's contract and did so abrogate them, the question as to
67 the power and duty of said Commission to abrogate them and the similar rates specified in all the similar contracts signed by defendant and other customers, was distinctly raised by a number of similar customers, and said question was fully argued before said Commission on the hearing and said Commission after mature consideration in its opinion delivered in both cases on the 24th of February 1914 decided that it was its power and duty to abrogate all of the rates specified in all of such contracts then outstanding, including that of petitioner, on the ground that such rates were unlawfully discriminatory and did in such opinion expressly positively abrogate them, as will more fully appear from the deliverance of said Tribunal on the subject of special contract rates in said opinion, as shown in Exhibit "B" hereto attached as a part of this answer.

Defendant files this its answer for cause why the prayers of petitioner should not be granted, and verifies the same that it may be used as evidence on the hearing, and prays that the same be regarded as its regular answer, should the cause further proceed.

Defendant prays that the injunction be refused, and the pending restraining order be dismissed.

GUERRY & SON,
ELLIS & GLAWSON,
Defendant's Attorneys.

68 GEORGIA,
Bibb County:

You, Jesse B. Hart, do swear that you are Vice-President of the Defendant Corporation and that you regularly perform the duties of President thereof, and that you are doing so now, and that W. J. Massee, its President, is absent from the State. That the foregoing answer is true, so help you God.

JESSE B. HART.

Sworn to and subscribed before me this the 18th day of April, 1914.

JAS. W. JELKS,
Notary Public, Bibb County, Georgia.

69 EXHIBIT A.

February 24th, 1914.

File 10978.

In re Application of GEORGIA PUBLIC SERVICE CORPORATION, Macon, Ga., for Increase in Commercial and Residence and in Retail Power Rates.

Upon consideration of the record in the above entitled case, and of the evidence and arguments submitted at the hearings had thereon and of the report and opinion this date adopted by the Commission containing its findings of facts and conclusions therein with respect to the issue involved, which said report is hereby referred to and made a part hereof, it is

Ordered: That on and after March 1st, 1914, and until the further order of this Commission, the following schedules of rates shall be the maximum schedules of rates to be charged by the Georgia Public Service Corporation, for the classes of service indicated:

Schedule of Rates for Commercial and Residence Lighting Service.

For the First	50	K. W. H's.	9¢	per K. W. H.	
For the Next	50	"	7¢	"	"
For the next	100	"	6¢	"	"
For the next	300	"	5¢	"	"
For the next	500	"	4¢	"	"
For the next	4,000	"	3¢	"	"
For all over	5,000	"	2¢	"	"

Minimum charge, per month $1.00.

Schedule of Rates for Commercial Power.

For the First	100	K. W. H's.	5¢	per K. W. H.	
For the Next	400	"	3¢	"	"
For the Next	500	"	2.5¢	"	"
For the Next	1,500	"	2¢	"	"
For the next	2,500	"	1.75¢	"	"
For all over	5,000	"	1.5¢	"	"

Minimum charge per month $1.00 for 2 H. P. or less connected.

Over 2 H. P. 50¢ per H. P. connected.

Ordered Further: That the Commission will consider as reasonable in this case a rule of the Georgia Public Service Corporation requiring the prompt payment of lighting and power bills, which fixes a penalty for failures to pay same on or before the 10th day of each month, of 10-percent of the bill.

C. M. CANDLER, *Chairman.*

By Order of the Commission:
CAMPBELL WALLACE, *Secretary.*

70 EXHIBIT "B."

Extract from Opinion Entered by the Railroad Commission of Georgia, Dated February 24th, 1914, in the Matter of Petition of Macon Railway and Light Company, Macon, Georgia, for Authority to Increase Lighting and Power in the City of Macon.

Special Contract Rates.

All special rates, whether in the form of contracts for definite periods, or informal, in excess of these prescribed rates are illegal. The rates prescribed are maximum rates and cannot be exceeded.

Should the Railway and Light Company have outstanding contracts, verbal or written, which are at less than the rates prescribed they must be abrogated, as unlawfully discriminatory, and made to correspond with the Commission's scale, or the same special rates given to all of the public.

The Commission has given careful consideration to the contentions of counsel for firms and individuals holding term contracts made at the rates now in effect, that they should stand and be carried out by the company. To allow them to stand and to require others of the public to pay higher rates would be rank discrimination; such a condition cannot be allowed to exist. One of the chief objections of the creation of this Commission, was that it should at all times prevent unlawful discriminations, and compel equality of service and charges to all under like circumstances and conditions.

Unlawful discriminations arising out of different rates can only be removed by moving the lower rate up to the higher, or the higher down to the lower.

The rights prescribed herein, are in the opinion of the Commission, at this time, just and reasonable. We have no power to compel the company to accept less, except as implied in the power to prevent unlawful discrimination.

The Courts have repeatedly ruled upon the principles involved in this question, and our own Supreme Court has several times held that the regulatory power of the Commission cannot be set aside by contracts of this character. Its latest deliverance on this question was in the Railroad Mileage Case (80 S. E. Rep. p. 332) in which it said:

"In the cases last cited the Supreme Court of the United States held that contracts already made (in the one case as to rates, in the other as to free transportation) must yield to lawful regulation as to interstate commerce: In the Armour Case (209 U. S. 82), Mr. Justice Day said: "If the shipper sees fit to make a contract covering a definite period for a rate in force at the time, he must be taken to have done so, subject to the possible change of the published rate in the manner fixed by State, to which he must conform or suffer the penalty fixed by law. In Kentucky and Indiana Bridge Co. vs. L. & N. R. R. Co. (21 C. C. Rep. 162) Judge Cooley said: If the Legislature had no power to alter its police laws when contracts

would be effected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable."

71 We do not believe it necessary to multiply citations on this question.

These contracts for rates lower than those prescribed in this case must be abrogated, or the public generally put upon the same basis, on and after March 1st, next.

Filed in office April 18, 1914. Rob't A. Nisbet, Clerk.

72 Bibb Superior Court, July Term, 1914.

No. 9.

UNION DRY GOODS COMPANY

vs.

GEORGIA PUBLIC SERVICE CORPORATION.

Equitable Petition and Amendment Thereto.

And now comes the defendant and in answer to the amendment allowed and filed in the above case *and* says:

1.

Defendant admits paragraph 1 of said amendment.

2.

In answer to paragraph 2 defendant admits that the said contract was entered into by petitioner and defendant before the said orders of the Railroad Commission were passed, and that said orders were invoked thereafter by defendant.

Defendant does not know how necessary the service of defendant contracted for by Petitioner, was to the purpose of petitioner's organization or to the successful or usual conduct of its business, but defendant admits its advantageousness to petitioner and avers that it is not only of greater value to petitioner than the rates mentioned in said contract but also *then* the rates established by the Commission.

Defendant otherwise denies all the allegations in said paragraph.

In answer to paragraph 3 defendant says, that said contract was discriminatory at the time it was made and that as held by the commission in its decision is rankly discriminatory now in

73 comparison with the rates established by the Commission.

The defendant otherwise admits said paragraph.

4.

Defendant denies paragraphs 4 and 5 of said amendment.

GUERRY & SON,
ELLIS & GLAWSON,
Defendant's Attorneys.

74 GEORGIA,
Bibb County:

You, Jesse B. Hart do swear that you are Vice-Pt. of Def't and acting Pres. of the same and that the foregoing answer to amendment is true.

JESSE B. HART.

Sworn to and subscribed before me this 18th April, 1914.

JAS. W. JELKS,
N. P., Bibb Co., Ga.

Filed in Office, April 18th, 1914. Rob't A. Nisbet, Clerk.

Bibb S. C.

UNION DRY GOODS CO.

vs.

GA. PUBLIC SERVICE CORPORATION.

Petition for Injunction, etc.

And now comes the Def't and by way of answer of law says that there is no cause of action set forth in petitioner's petition as amended.

GUERRY & SON,
ELLIS & GLAWSON,
Def't's Att'ys.

Filed in office April 18th, 1914. Rob't A. Nisbet, Clerk.

75 Bibb Superior Court.

UNION DRY GOODS COMPANY

vs.

GEORGIA PUBLIC SERVICE CORPORATION.

Petition for Injunction, etc.

The defendant in answer to the amendment to plaintiff's petition filed April 29", 1915, says:

1.

In answer to Par. 1 of said amendment defendant says that it made the low rates specified in the plaintiff's alleged contract under stress of ruinous competition as set forth by this defendant in its original answer in further answering the petition after answering the 15th Par. thereof.

The defendant does not deem it necessary or proper to encumber the record by a repetition of the same.

2.

In answer to Par. 2 of said amendment the defendant admits that the contract with the plaintiff was not the result of any subterfuge or fraudulent conduct on the part of the plaintiff and also admits that the contract was not obtained by any secret understanding or device but the defendant otherwise denies the allegations in said paragraph.

3.

Defendant admits Par. 3 of said amendment.

4.

In answer to Par. 4 of said amendment defendant says that
76 the rates specified in the alleged contract of plaintiff were not the established rates of the Railroad Commission of Georgia by any direct or specific action but were only established indirectly and as permissive and not subject to be discontinued or raised without the consent of the Railroad Commission first being obtained as provided in said General Order No. 14.

That this defendant discontinued and raised the rates with the consent of the Railroad Commission and under its orders as shown by the averments in its original answer and the Exhibits "A" and "B" thereto.

5.

In answer to Par. 5 of said amendment defendant says that it denies the allegations thereof.

6.

Defendant denies the allegations of the 6th and 7th paragraphs of said amendment.

DU PONT GUERRY.

77 GEORGIA,
Bibb County:

Personally appeared before me Jesse B. Hart who on oath says that he is President of the Georgia Public Service Corporation and that he is authorized to make this affidavit and that the statements

contained in the foregoing answer are true in point of fact, and that he is advised and believes that they are true in point of law.

JESSE B. HART.

R. E. FINDLAY,
Notary Public, Bibb Co., Ga.

Filed in office, April 29, 1915. R. F. Hunter, Dep. Clerk.

78 In Bibb Superior Court.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Petition for Injunction, etc.

This case having been reached and called for final trial before the Court and jury, and the parties thereto having in open court waived a trial by jury and agreed in open court to try all the issues of law and fact in said case before the Court, (H. A. Mathews Judge of said Court presiding) and the Court under said waiver and agreement having proceeded with and concluded said trial and having reached the conclusion that under the evidence and the law applicable thereto the defendant is entitled to a verdict, the Court hereby finds for the Defendant.

May 6th, 1915. H. A. MATHEWS,
J. S. C. M. C.

79 In Bibb Superior Court.

UNION DRY GOODS COMPANY
vs.
GEORGIA PUBLIC SERVICE CORPORATION.

Petition for Injunction, etc.

The parties in the above case having in open court waived a trial by jury and agreed in open court to try all the issues of law and fact in said case before the Court (H. A. Mathews Judge of said Court presiding) and the Court under said waiver and agreement having proceeded with and concluded said trial and having found a verdict for the defendant.

It is now adjudged and decreed by the Court that the prayers of petition for specific performance and injunction and all other relief be and the same are hereby refused and denied and that the defendant do recover of the petitioner the sum of — dollars and — cents.

Decree signed this the 6th day of May, 1915.

H. A. MATHEWS,
J. S. C. M. C.

DU PONT GUERRY,
Def't's Att'y.

80 GEORGIA,
Bibb County:

Clerk's Office, Superior Court.

I hereby certify that the foregoing pages attached contain a true and complete transcript of such parts of the record in the case therein stated as are in the bill of exceptions specified; and that the term of said court at which said case was tried has not adjourned.

Witness my signature and the seal of said court hereto affixed, this 2d day of June, 1915.

[SEAL.] ROBT. A. NISBET,
Clerk Superior Court, Bibb Co., Ga.

81 11, Macon, March Term, 1914.

UNION DRY GOODS COMPANY
v.
GEORGIA PUBLIC SERVICE CORPORATION.

By the COURT:

1. Where the legislature confers upon the Railroad Commission the power to fix maximum rates for service rendered to the public by individuals or corporations engaged in a public service, the maximum rates fixed by the commission are presumptively reasonable, and public service companies may demand such maximum rates.

2. If a patron of a public-service corporation, furnishing electrical power and light, sees fit to make a contract covering a definite period of time, where no rates have been prescribed by the railroad commission, he will be taken to have done so subject to subsequent schedules of rates lawfully prescribed by the commission.

(*a*) Constitutional restraints upon the impairment of the obligation of contracts do not prevent the State from exercising such powers as are necessary in the exercise of its sovereign right to protect the lives, health, morals, comfort, and general welfare of the public, though contracts previously entered into between individuals may thereby be affected.

3. The Railroad Commission act of 1907 (Acts 1907, p. 72), giving to the commission jurisdiction over electrical lighting and power companies, and the order of the commission fixing
82 maximum rates in the instant case, are not void as in opposition to the clauses in the Federal and State constitutions prohibiting the passage of any ex post facto law, or law impairing the obligation of contracts, or the taking of property without due process of law, or for a public use without just compensation.

4. Nor do the fifth and sixth sections of the Railroad Commission act of 1907 (Civil Code of 1910, §§2662, 2663) violate art 1, sec. 4, par. 1, of the constitution of Georgia, forbidding special legislation in a case already provided for by an existing general law, and declaring that "no general law affecting rights shall be varied in any

particular case by special legislation, except by the consent, in writing, of all persons affected thereby."

EVANS, *P. J.*:

The Union Dry Goods Company, a mercantile corporation, doing business in the City of Macon, contracted with the Georgia Public Service Corporation to supply it with electrical power and light upon stipulated rates for the period of five years. At the time of the making of this contract there was neither statute nor rule of the Railroad Commission regulating rates for the service contracted for. After the contract had run for more than a year (both parties complying therewith) the public-service company applied to the
83 Railroad Commission of Georgia (having jurisdiction of electric light and power companies) for an increase in rates. The commission published an order declaring that the schedules of rates therein contained, until the further order of the commission, shall be the maximum schedules of rates to be charged by the Georgia Public Service Corporation for the classes of service indicated. The maximum rates of these schedules are in excess of the rates fixed in the contract between the dry goods company and the public-service company. The public-service company demanded payment of the dry goods company at the maximum rate fixed in the commission's order for service rendered since its promulgation; and the dry goods company seeks to enjoin the public-service company from discontinuing its service unless the difference between the contract rate and that demanded be paid for the service specified in the contract. An interlocutory injunction was refused.

It appears that the commission also had under consideration, at the time the application of the Georgia Public Service Corporation was pending, the petition of the Macon Railway and Light Company for authority to increase lighting and power rates in the City of Macon. Contemporaneously with the filing of the commission's order fixing a schedule of rates to be charged in the City of Macon, the commission filed an opinion, in which it was stated that the prescribed rates were just and reasonable, and that any outstanding contracts for rates lower than those prescribed must be abro-
84 gated, or the public generally put upon the same basis. The commission's opinion was entitled in the name of the Macon Railway and Light Company; but as it referred to the schedules of rates applicable to all public-service companies for power and light supplied in the City of Macon, we deem the opinion as relating to the order fixing the schedules of rates. The pivotal question is the effect of the commission's order on the contract between the dry goods company and the public-service company. Did it empower the Georgia Public Service Corporation to disregard the contracted rate, and charge for the service at the maximum rate allowed by the commission? The commission has no power to fix unreasonable rates, and therefore the maximum rates of the schedules are to be deemed, as declared by the commission in its opinion promulgating them, just and reasonable. Where the legislature confers upon a commission

the power to fix reasonable rates for service rendered to the public by individuals or corporations engaged in a public service, the rates fixed by the regulating commission are presumptively reasonable. Reagan v. Farmers Loan, &c., Co., 154 U. S. 362 (14 Sup. Ct. 1047, 38 L. ed. 1014). As the reasonableness of the commission's schedule of rates is not attacked, we will proceed, in the further discussion of the case, upon the premise that the maximum rates prescribed by the commission are just and reasonable.

Counsel for the plaintiff in error argue that the commission's order is not to be construed as fixing minimum rates, and hence it should not be given the effect of abrogating, or of giving the Georgia Public Service
85 Corporation the power to abrogate, the lower rates of the contract, which were lawful when the contract was made. The commission was petitioned for an increase of rates for lighting and power service in the City of Macon. It fixed certain rates as reasonable. It is true that such rates were declared to be maximum. Nevertheless the power and light companies were authorized to exact the maximum rate, and the effect is the same as if the commission had simply declared that the rates were reasonable. We think that the scope of the order was to prescribe the rates specified in the schedule as just and reasonable.

We now approach the crux of the whole proposition: viz., the effect of the order prescribing a higher rate as reasonable upon the lower rate stipulated in the contract. It most of the cases of challenge against the right of a State or of Congress to alter a rate fixed by contract of the parties, the point was raised by a common carrier, in protest against the lowering of the contract rate by the legislature or body to which the power of rate regulation was delegated. It is now universally conceded that a State legislature, or Congress, within their respective jurisdictions, has power to regulate common carriers, and that the power is not destroyed because such regulations may to some extent affect the power to contract, or existing contracts. Railroad Com. v. L. & N. R. Co., 140 Ga. 817 (80 S. E. 327), and cases cited. As was said in Hudson County Water Co. v. McCarter, 209
U. S. 349, 357 (28 Sup. Ct. 529, 52 L. ed. 828, 14 Ann. Cas.
86 560): "One whose rights, such as they are, are subject to State restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject-matter." The carrier who has contracted for a higher rate has been denied that rate because it was in excess of a lesser rate prescribed by the proper rate-making body, and found to be reasonable. We see no reason why the rule should not be applied in favor of the carrier as well as against him; and we think the authorities sustain us in this position. In Armour Packing Company v. U. S., 209 U. S. 56 (28 Sup. Ct. 428, 52 L. ed. 680), the defendant had been indicted for accepting a rebate from the regular published rates of the carrier. His defense was that prior to the amendment of the interstate-commerce act he had contracted with the railroads to carry the commodities shipped by him at rates which were less than those which were subsequently established under the

authority of the Interstate Commerce Commission. In the opinion Mr. Justice Day said: "If the shipper sees fit to make a contract covering a definite period for a rate in force at the time, he must be taken to have done so subject to the possible changes of the published rate in the manner fixed by statute, to which he must conform or suffer the penalty fixed by law." In L. & N. R. Co. v. Mottley, 219 U. S. 467 (31 Sup. Ct. 265, 55 L. ed. 297, 34 L. R. A. (N. S.) 671), the railroad company contracted with a man and his wife who
87 were injured while traveling on the road, in consideration of a release of their claim for damages, to issue free passes to them during their respective lives. Afterwards the interstate-commerce act was so amended as to make it unlawful for an interstate carrier to transport any person for a greater or less or different compensation than any other person, with certain exceptions. It was held, that, after the amendment of June 29, 1906, it was unlawful for a carrier to issue interstate transportation in pursuance of a prior existing contract to do so as compensation for injuries received, and, even though valid when made, such a contract could not be enforced against the carrier. In City of Dawson v. Dawson Telephone Company, 137 Ga. 62 (72 S. E. 508), a telephone company made application to a municipality for a franchise to operate a telephone system in the city. The application was accepted, provided the company, among other things, would agree to maintain particular rates and furnish free service to the several departments of the city government. The company accepted in writing the terms proposed in the ordinance, and began business under such franchise, and charged the rates specified in the ordinance. Subsequently the Railroad Commission of this State authorized an increase in the charge for telephone service. The city sought to enjoin the company from charging the rates permitted by the order of the commission. It was held, that the arrangement between the telephone company and the city did not deprive the Railroad Commission of their power to
88 authorize an increase in the rates, and that the order of the commission was not violative of the constitutional inhibition against impairment of the obligation of contract. To the same effect is State ex rel. Webster v. Superior Court of King County, 67 Wash. 37 (120 Pac. 861, 29 Ann. Cas. (1913D) 78). In deciding that the constitutional guaranty against impairment of the obligation of a contract does not apply to the exercise by a State of its police power, Mr. Justice Brown, speaking for the United States Supreme Court, said: "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, with its various ramifications, is known as the police power, is in exercise of the sovereign right of the government to protect the lives, health, morals, comfort ,and general welfare of the people, and is paramount to any rights under contracts between individuals." Manigault v. Springs, 199 U. S. 473, 480 (26 Sup. Ct. 127, 50 L. ed. 274).

At common law, if public-service corporations served all at reasonable rates, they performed their obligation; but modern industrial conditions demand the further requirement that they shall serve all with equality. They are usually clothed with the power of eminent domain, and this attribute of sovereignty converts
89 them into quasi public institutions; and hence it has become the accepted modern doctrine that public-service companies must not only serve the public at reasonable rates, but shall also serve the public efficiently and without discrimination. 2 Wyman on Pub. Serv. Corp. §§ 1281, 1289, 1290. The public have a right to demand efficient service, and the Railroad Commission is given full power to require that the companies shall render efficient service. Civil Code (1910), § 2663. The service rendered may be commensurate with the price charged for such service, but such service may not meet the requirements demanded by the developments and growth of the city. It is possible to conceive a case where a large majority of a city prefer a more extensive service, and where the necessities of the municipal life demand an enlargement of the present service. The company is willing to meet the necessities of the case, provided a reasonable charge for the services rendered is permitted. The matter is submitted to the Railroad Commission. After full investigation the commission is of the opinion that an enlarged service is necessary and proper under the circumstances, and fixes a schedule of rates to be charged for the increased facilities. A few individuals may hold contracts binding the company to rates less than those fixed by the commission as reasonable. Ought the development and necessities of the municipality, in situations like this, be controlled by a contract with a few individuals; or shall it be considered that the case falls within the proper exercise
90 of the police power in the interest of the common weal? Manifestly the public health, progress, morals, and general well-being of a municipality can not be bound up in a contract with a few individuals. Hence we think that when the Railroad Commission prescribed a reasonable rate for electrical lighting and power companies, the rate thus established had the effect of overriding the contractual rate between the public-service company and its patrons, made anterior to the commission's order.

It is urged that the act of 1907 (Acts 1907, p. 72), conferring power on the Railroad Commission to fix the rate of electric power and light companies, and the order of the commission, are void as being in opposition to the clauses of the Federal constitution prohibiting the passing of any ex post facto law, or law impairing the obligation of contracts, and the taking of property without due process of law, or for public use without just compensation. It is further contended that similar provisions of the State constitution have been violated by the promulgation of this order. The foregoing discussion clearly demonstrates that the act of 1907 and the order of the commission are not in violation of these provisions of the Federal and State constitutions.

It is further insisted that sections 5 and 6 of the act of 1907, as codified in the Civil Code of 1910, §§ 2662, 2663, are uncon-

stitutional, as being opposed to art. 1, sec. 4, par. 1, of the constitution of the State of Georgia, which declares that "Laws of
91 a general nature shall have uniform operation throughout the State, no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights shall be varied in any particular case by special legislation, except by the free consent, in writing, of all persons to be affected thereby"; the contention being, that at the time of the passage of the act of 1907 there was a general law (Civil Code (1910), § 2216) defining the common powers of all corporations, and authorizing them to hold property and to do all such acts as are necessary for the purposes of their organization, and a general law (Civil Code (1910), § 2234) permitting corporations creating electricity to make contracts, lease power, etc., to any person or corporation; that sections 5 and 6 of this act would contravene these general sections, for the reason that they would curtail the power of this class of corporations in making contracts and holding property necessary to the purpose of their corporation, and would not curtail the like rights and powers, under the general law, of those corporations which are not made subject to the jurisdiction of the Railroad Commission of Georgia. There is no merit in this contention. The power of the State to establish a railroad commission, and to prescribe regulations for persons or corporations engaged in the service of the public is too well established to require demonstration. Such laws are in exercise of the police power, and do not run counter to general legislation pertaining to other matters. Judgment affirmed. All the Justices concur except Fish, C. J., absent.

92 9, Macon, October Term, 1915.

UNION DRY GOODS COMPANY
v.
GEORGIA PUBLIC SERVICE CORPORATION.

By the Court, ATKINSON, *J.*:

The Union Dry Goods Company had a contract with the Georgia Public Service Corporation for service of electric current at its place of business, at specified rates, as fixed by existing rules of the railroad commission. About nineteen months after execution of the contract the railroad commission of Georgia adopted certain orders fixing rates to be charged, applicable to the business of the public-service corporation, which were higher than those specified in the contract with the Union Dry Goods Company. The latter company undertook to enjoin the former from putting into effect the higher rates. On exception to a judgment refusing an interlocutory injunction, this court, on the basis of a presumption that the rates fixed by the railroad commission were reasonable, held that the order was valid, and that *if* superseded the pre-existing contracts made by the parties; and affirmed the judgment. Union Dry Goods Company v. Georgia Public Service Corporation, 142 Ga. 841

(83 S. E. 946). On the final trial before the judge trying the case, by consent, without a jury, a judgment was rendered denying the injunction. Held:

93 1. Evidence that at the time of making the contract the parties acted in good faith, and that the contract was made at the solicitation of the public-service corporation, which was also making similar contracts with other customers in the city at lower rates than those made with plaintiff, and that the conventional rate paid by the plaintiff afforded the public-service corporation a fair and reasonable profit for the service and electricity furnished, was insufficient to overcome the presumption that the rates prescribed by the railroad commission more than a year after execution of the contract were reasonable. And there being no other evidence offered to show the unreasonableness of the rates prescribed, the rejection of the evidence indicated above will not require a reversal; nor was there error in admitting properly certified copies of the orders, offered by the defendant. See Sorrell v. Central Railroad, 75 Ga. 509; Southern Railway Co. v. Atlanta Stove Works, 128 Ga. 207 (57 S. E. 429).

2. An order of the railroad commission, fixing a schedule of rates to be charged by public-service companies in a given municipality, is not invalid solely because a contract-holder of one of the public-service companies was not made a party and notified of the proceedings before the commission.

3. The other questions presented by the record are concluded by the rulings made when the case was decided upon exceptions to the judgment refusing an interlocutory injunction.

Judgment affirmed. All the Justices concur.

94 Supreme Court of Georgia.

ATLANTA, December 17, 1914.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

UNION DRY GOODS CO.
v.
GEORGIA PUBLIC SERVICE CORPORATION.

This case came before this court upon a writ of error from the superior court of Bibb county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Fish, C. J., absent, on account of sickness.

Bill of costs, $10.00.

95 Supreme Court of Georgia.

9. Macon.

ATLANTA, August 18, 1916.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

UNION DRY GOODS CO.
v.
GEORGIA PUBLIC SERVICE CORP.

This case came before this court upon a writ of error from the superior court of Bibb county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

Bill of costs, $10.00.

96 Supreme Court of the State of Georgia.

CLERK'S OFFICE,
ATLANTA, GA., Dec. 7, 1916.

I hereby certify that the foregoing pages hereto attached contain the original writ of error, citation and acknowledgment of service, together with the true and complete transcript of those parts of the record in the case of The Union Dry Goods Co., Plaintiff in Error, v. The Georgia Public Service Corporation, Defendant in Error, which are required by the Præcipe of the Plaintiff in Error to be sent to the Supreme Court of the United States, as appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 25,660. Georgia Supreme Court. Term No. 830. Union Dry Goods Company, plaintiff in error, vs. The Georgia Public Service Corporation. Filed December 26th, 1916. File No. 25,660.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 346.

UNION DRY GOODS COMPANY,
Plaintiff in Error,

v.

GEORGIA PUBLIC SERVICE CORPORATION,
Defendant in Error.

In Error to the Supreme Court of the State of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The Union Dry Goods Company, a mercantile corporation doing business in the City of Macon, contracted with the Georgia Public Service Corporation to supply it with electric power and light upon stipulated rates for a period of five years. This contract was executed July 18, 1912. At the

time the contract was made the rate was a lawful rate, there being no law in the State of Georgia nor any rule or regulation of the Railroad Commission of Georgia prohibiting the contract as made. Both parties recognized and executed the contract as valid until March, 1914. Thereupon, the Georgia Public Service Corporation applied to the Railroad Commission of Georgia for permission to increase its rates for electric service to a rate in excess of that stipulated in its contract with the Dry Goods Company. After a hearing before the Railroad Commission on February 24, 1914, the Commission passed an order upon the application of the Light Company, which order is attached to the defendant's answer and marked Exhibit "A," and which order provided that after March 1, 1914, certain schedules and rates should be the maximum schedules and rates to be charged by the Light Company in the City of Macon.

The defendant in the Court below also offered in evidence an extract from the opinion of the Railroad Commission dated February 24, 1914, in the matter of the petition of Macon Railway & Light Company for authority to increase its rates in the City of Macon. This extract is attached to the defendant's answer and marked Exhibit "B," and provided that the rates prescribed were the maximum rates and not to be exceeded. It did not provide that the rates were the minimum rates and could not be reduced. It did provide that if the Macon Railway & Light Company should have outstanding contracts, verbal or written, which were less than the rates prescribed, they must be abrogated as unlawfully discriminatory and made to correspond with the Commission's schedule, or the same special rates given to all of the public. It nowhere provided that any light contracts of the Georgia Public Service Corporation should be likewise abrogated. The Union Dry Goods Company was not a party to either

of these proceedings before the Railroad Commission, nor did it participate in the hearings.

Relying upon these orders of the Railroad Commission, the defendant after the date upon which they were declared to be effective declined to be bound by its contract with the plaintiff, and repudiated the same, and insisted that the plaintiff, the Dry Goods Company, should pay for its electric service a much higher rate than the rate fixed in the written contract. The plaintiff tendered to the defendant the amount of money which it was due under the written contract for the month of March, 1914, and the defendant refused the tender and insisted that it be paid at the higher rate, and was threatening to enforce against the plaintiff its rule to discontinue is service unless the higher rate was paid. The plaintiff declined to pay the higher rate, relying upon its contract as a valid contract, and brought suit for injunctive relief and specific performance against the defendant in the superior court of Bibb County. The interlocutory hearing was had before the chancellor on the 20th day of April, 1914, and after evidence and argument the Court denied the prayers of the petition and dissolved the restraining order previously granted. To this judgment the plaintiff filed its bill of exceptions alleging that the judgment was error.

The Supreme Court of Georgia affirmed the judgment on the interlocutory hearing on December 17, 1914, the decision being reported in the 142 Georgia Reports, p. 841, in the case of Union Dry Goods Company *v.* Georgia Public Service Corporation. The case then in the lower court came on for a hearing at the regular trial term; both sides waiving a trial by jury and agreeing to try all the issues of law and fact before the court.

On the final trial in the superior court of Bibb County the plaintiff introduced evidence to show that the contract rate

was in fact a reasonable rate and afforded to the Georgia Public Service Corporation a fair profit for the service rendered, and sought to show thereby that the rate fixed by the Railroad Commission was an unreasonable rate, because it was greatly in excess of the rate fixed by the contract between the parties and the evidence offered tending to show that the contract rate afforded a large profit (at least of twelve per cent.) upon the investment for the service rendered by the Light Company to the plaintiff.

The lower court refused to permit the plaintiff to introduce this evidence to show that the contract rate was a reasonable rate, and held as a matter of law that the rate fixed by the Railroad Commission was not only presumptively a reasonable rate, but the rate fixed by the Commission was conclusive and final and that the plaintiff and defendant could not be heard to attack it, and rendered final judgment in the case for the defendant, refusing the prayers for injunction and specific performance.

The plaintiff carried the case again from the final decree to the Supreme Court of Georgia by bill of exceptions, and the same was decided by that Court on August 18, 1916; the decision of the superior court of Bibb County being affirmed and the case being reported in the 145 Georgia Reports, p. 658. Thereupon the plaintiff applied for and obtained a writ of error in the Supreme Court of the United States directed to the Supreme Court of the State of Georgia on November 15, 1916.

SPECIFICATION OF THE ERRORS RELIED UPON.

The errors relied upon in this case are simply that each of the lower courts, as set out in the foregoing statement, held that the contract between the Dry Goods Company and the

Light Company, the Georgia Public Service Corporation, was invalid and inoperative and was abrogated by reason of the orders of the Railroad Commission of the State of Georgia, which were put in evidence by the defendant, and which were relied upon by the defendant as sufficient ground for its refusal to comply with its written contract.

The point was made and relied upon by the plaintiff in each of the lower courts that the orders of the Railroad Commission of Georgia relied upon by the defendant were, in so far as they affected the plaintiff's contract with the defendant, and in so far as they were given the construction claimed for them by the defendant and given to them by the lower courts, in violation of Article 1, Section 10 of the Constitution of the United States, which provides that no State shall pass any *ex post facto* law or any law impairing the obligation of contracts, and were also in violation of Article 8, Article 5 of the Constitution of the United States, which provides that no person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation.

The point was also made that the Act of the Legislature of Georgia contained in the Acts of 1907, p. 72, Sections 5 and 6, defining the jurisdiction and powers of the Railroad Commission of Georgia, giving it the authority to determine what are just and reasonable rates, and under which the Railroad Commission of Georgia assumed to pass the orders aforesaid, upon which the defendant relied for the abrogation of its contract, was likewise unconstitutional, null and void, because in violation of the same provisions of the United States constitution cited above, under the construction given to said Act by the lower courts; which construction was that the said Act of the Legislature of Georgia authorized and empowered the Railroad Commission of Georgia to pass the orders relied

upon by the defendant as abrogating the written contract between the Union Dry Goods Company and the Georgia Public Service Corporation.

These contentions of the plaintiff are made at length on pages 3, 4, 5, 6, 12, 17, 30, 31 and 33 of the record in this case. These contentions were denied by the Supreme Court of Georgia, and it is these rulings of the Supreme Court of Georgia that are relied on as error in this Court. Pages 45, 46, 47, 48, 49, 50 and 51 of the reocrd.

It was conceded that the contract between the parties was in all respects a legal and binding contract at the time of its execution. (See opinion of the Supreme Court of Georgia, p. 46 of the Record). The plaintiff also offered evidence to show that the contract rate was a reasonable rate and that the rate fixed by the Railroad Commission of Georgia was excessive. (See pp. 12 and 13 of the Record.) The point was made and is relied on that the Supreme Court of Georgia committed error in denying to this valid and legal contract the protection of the provisions of the United States constitution above cited.

BRIEF AND ARGUMENT.

General order No. 14 of the Railroad Commission of Georgia, passed December 23, 1909, was in force at the time of the execution of the written contract in this case, and the material portion of this order provided as follows:

> "All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed by this Commission, whether such rates are the result of voluntary action upon the part of any company, corporation or person subject to the jurisdiction of this Commission, or otherwise, are hereby estab-

lished as the rates of the Railroad Commission of Georgia, and no such rates shall be discontinued nor raised without the consent of the Railroad Commission first being obtained, but all such rates shall continue in force without hindrance, the same as other rates prescribed by the Commission."

The statute law of Georgia relative to light companies is as follows:

> *"Electric railroad companies may sell light and power.* Electric street and suburban railroad companies, now or hereafter incorporated, may operate electric plants and furnish electric light and electric power to any town or city within the limits of the county in which such railroad is located, and also to corporations, companies and private citizens residing or doing business within the limits thereof, and may charge and collect reasonable compensation for the same."
>
> Code of Georgia, 1910, Sec. 2611.

The statute law of Georgia as to the powers of corporations is as follows:

> "All corporations have the right to sue and be sued, to have and use a common seal, to make by-laws, binding on their own members, not inconsistent with the laws of this State and of the United States, to receive donations by gift or will, to purchase and hold such property, real or personal, as is necessary to the purpose of their organization, and to do all such acts as are necessary for the legitimate execution of this purpose."
>
> Code of Georgia, 1910, Sec. 2216.

The charter of the Union Dry Goods Company was put in evidence, and it was alleged and proved that the rights of the plaintiff under this contract were property rights having an

intrinsic value, and were necessary to the operation and conduct of the plaintiff's business. (See pp. 18 and 19 of the Record in this case.)

Upon the urgent solicitation of the Light Company the defendant entered into the contract which is set forth on pages 20 and 21 of the Record for a period of five years, and did so at the time relying upon its right to do so under the above stated provisions of the law of Georgia.

The Act of 1907 of the Georgia Legislature, p. 74, section, 5, by virtue of which the Railroad Commission claimed authority to pass its order abrogating the contract of the plaintiff, is as follows:

> "Sec. 5. Be it further enacted by the authority aforesaid, That the power to determine what are just and reasonable rates and charges is vested exclusively in said commission. The printed reports of the Railroad Commission, published by its authority, shall be admissible as evidence in any court in Georgia without further proof and the schedules of rates made by the commission and any order passed or rule or regulation prescribed by the commission shall be admissible in evidence in any court in Georgia upon the certificate of the secretary of the commission. The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged, so that its authority and control shall extend to street railroads and street railroad corporations, companies or persons owning, leasing or operating street railroads in this State; *provided, however,* that nothing herein shall be construed to impair any valid, subsisting contract now in existence between any municipality and any such company, and provided that this Act shall not operate as a repeal of any existing municipal ordinance; nor shall it impair nor invalidate any future contract or ordinance of any municipality as to the public uses of such company that shall receive the assent of the Railroad Commission; over docks and

wharves and corporations, companies, or persons owning, leasing or operating the same; over terminals or terminal stations and corporations, companies or persons owning, leasing or operating such; cotton compress corporations or associations, and persons or companies owning, leasing or operating the same; and over telegraph or telephone corporations, companies or persons, owning, leasing or operating a public telephone service or telephone lines in this State, over gas and electric light and power company corporations or persons owning, leasing or operating public gas plants or electric light and power plants furnishing service to the public."

The orders of the Railroad Commission of Georgia relied upon by the Light Company for the abrogation of its contract with plaintiff are printed in the record on pages 39, 40 and 41. The orders provided that the Georgia Public Service Corporation was authorized to charge as maximum rates rates which are in excess of the contract rates fixed in the written contract between the plaintiff and the Light Company.

In its decision of this case on appeal from the interlocutory order the Supreme Court of Georgia (142 Georgia Reports, p. 842, h. n. 1), held:

> "Where the legislature confers upon the Railroad Commission the power to fix maximum rates for service rendered to the public by individuals or corporations engaged in a public service, the maximum rates fixed by the commission are presumptively reasonable, and public service companies may demand such maximum rates."

The decision, we think, holds that such rates so fixed are presumptively reasonable only, and means that such rates are only *prima facie* reasonable and not conclusively reasonable and immune from attack; this latter meaning being the con-

struction placed upon the order of the Railroad Commission by the superior court of Bibb County and the error was not corrected by the Supreme Court of Georgia, although evidence sufficient to overcome the presumption of the reasonableness of the rates was offered by the plaintiff on the final trial of the case. (See Record, pp. 12, 13, where W. J. Massee, president of the defendant, the Georgia Public Service Corporation, was offered as a witness to prove the reasonableness of the contract rate.)

We think that there is a distinction under the Georgia law between the power of the Legislature, or the Railroad Commission, to regulate and fix rates for railroad corporations and their same power over public service corporations, for the Legislature is expressly given the power by the constitution of Georgia in Article 4, Section 2, Paragraph 1, to regulate railroad rates and to prevent unjust discriminations, but no such constitutional authority exists as to light companies and other corporations. This section of the Constitution of Georgia is as follows:

> "The power and authority of regulating railroad freight and passenger tariffs, preventing unjust discriminations, and requiring reasonable and just rates of freight and passenger tariffs are hereby conferred upon the General Assembly, whose duty it shall be to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads in this State, and to prohibit such roads from charging other than just and reasonable rates, and enforce the same by adequate penalties."

If it should be contended that a like power is vested in the Legislature as to all public service corporations by Article 4, Section 2, Paragraph 2 of the Constitution of Georgia, defining the police power of the State, which is as follows:

> "*Right of eminent domain;* police power. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State."

We would suggest that this provision of the constitution clearly is a provision for the benefit of the public themselves, and was not intended to be a refuge and lever by means of which a public service corporation could protect and benefit itself at the expense and infringement of the contract rights of the public dealing with said corporation. To give this section of the constitution such a construction is to take the weapon which was meant for the protection of the people, and turn it into an instrument for their destruction. This is true since this section of the constitution expressly declares that the exercise of the police power of the State shall never be so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of the individuals or the general well-being of the State.

We suggest that in the contract entered into in this case, which was a legal contract when it was executed and entered into between the parties, that the plaintiff had equal rights with the defendant, and the police power of the State should not be so construed as to permit the defendant to conduct its business in such a manner as to infringe the equal rights of the plaintiff in the written contract. Nor does the police power section of the constitution above set out, by its terms or by any reasonable construction, authorize the destruction

of a contract such as this; and if it does it is in violation of the provisions of the United States Constitution relied on in this case.

The contract in this case being a valid contract when it was made, could not be impaired or destroyed by any subsequent action of the legislature, the railroad commission or the courts.

> Chicago *v.* Shelton, 76 U. S., p. 50, 19 L. Ed. 594;
> White *v.* Hart, 80 U. S., p. 646, 20 L. Ed. p. 685;
> Delmas *v.* Merchants Mutual Ins. Co., 81 U. S., p. 670, 20 L. Ed. p. 757, h. n. 3.

This head note is as follows:

> "The contract was valid as made. Any subsequent constitutional provision which makes it void is in violation of the Federal Constitution on the subject of impairing the obligation of contracts."

It was held in Detroit *v.* Detroit Citizens Street Ry. Co., 184 U. S., p. 368, 46 L. Ed., p. 592, that where a street railway company had a contract right by virtue of an ordinance of the city to charge five cent fares, the company could not be required by statute to sell six tickets for twenty-five cents, the contract being protected against impairment by the Federal constitution.

We submit that this case is directly in point, the only difference being, in that case the rate was lowered and the complaint was made by the public service corporation. The case at bar is decidedly stronger, in that, in the Detroit case there was a common carrier involved, and for the further reason that the contract was contained in a city ordinance, which, if there is any difference, is more likely to be changed or amended by the city than is a valid contract between private persons to be cancelled by subsequent State action.

See, to the same effect, Minneapolis *v.* Minneapolis St. Ry. Co., 215 U. S., p. 417; 54 L. Ed., p. 259; Dillon on Municipal Corporations, 5th Ed. Sec. 1326.

In New Orleans Gas Light Co., *v.* Louisiana Gas Co., 115 U. S., p. 650; 29 L. Ed., p. 516, it was held that a charter giving a gas light company the exclusive privilege of supplying gas through pipes and mains constituted a contract within the protection of the Federal Constitution against any impairment by subsequent legislation, and that this contract could not be impaired by the Legislature giving thereafter to another company within the same period the privilege of supplying gas to that city.

In discussing the police power of the State in reference to this contract the Court held that the exclusiveness of the grant had no relation to the public health or safety. Nor can it possibly be maintained in this case that the police power of the State, in its oversight of the public health, safety, morals and well-being has any concern with the rate charged by the light company, further, at the most, than that the rate should be sufficient to enable the company to operate and perform its duties to the public, and the evidence offered in this case is to the effect that the rate was sufficient to allow the company to do this and make a profit of twelve per cent. In no sense can it be said that the police power of the State is subserved by the abrogation of this contract, and if this contract is to be destroyed by virtue of the police power, we can conceive of no contract that can be made that may not as well be destroyed under this pretended authority.

See, also, New Orleans Water Co., *v.* Rivers, 115 U. S., p. 674; 29 L. Ed. p. 525.

Where a town under legislative authority made a contract with a water company at certain maximum rates, such contract could not be impaired by the State or town.

Vicksburg *v.* Vicksburg Water Co., 206 U. S. p. 497, 51 L. Ed., p. 1155.

In Bridge Proprietors *v.* Hoboken, 1 Wallace, p. 116, 17 L. Ed., p. 571, it was held that where a State statute authorized commissioners to contract for the building of a bridge, and provided that no other bridge could be built for a term of ninety-nine years, the statute constituted a contract that could not be impaired by subsequent legislation.

So, where a bridge company was given a charter authorizing it to build a bridge and collect tolls, and provided it should be unlawful for any one else to erect another bridge or establish a ferry within two miles of the bridge, it was held that this was a contract protected by the Federal Constitution against impairment.

Binghamton Bridge Case, 3 Wallace, p. 51, 18 L. Ed., 137.

So, also, a contract for interest on interest, valid when made, is unconstitutionally impaired by a statute later making such contracts unlawful.

Koshkonong *v.* Burton, 104 U. S., p. 668, 26 L. Ed., 886.

So, also, is a charter fixing the rate of tax to be paid by a corporation in lieu of all other taxes by a State statute imposing other taxes.

Farrington *v.* Tennessee, 95 U. S., p. 679, 24 L. Ed., 558.

So, also, a mortgage contract conferring power of sale upon breach of condition, valid when made, is unlawfully impaired by a subsequent statute giving the debtor twelve months to redeem.

Bronson *v.* Kinzie, 1 Howard, p. 311, 11 L. Ed., 143.

So, also, the grant of exclusive privileges to a water company is impaired by a statute abolishing monopolies.

St. Tammany *v.* New Orleans Water Works Co., 120 U. S., p. 64, 30 L. Ed., 563.

It will be observed that all of the authorities relied upon by defendant, and cited by the Railroad Commission of Georgia in its orders and by the Supreme Court of Georgia in this case, both on the interlocutory and on the final hearing, are cases falling under one of the three following heads, which make them materially different from the case at bar, to-wit:

1. Cases involving the construction of an Act of Congress, against which there is no constitutional inhibition as to the impairment of the obligation of a contract; the constitutional provision being that no State shall pass a law which shall impair the obligation of a contract. There is no such provision prohibiting Congress in its regulation of interstate commerce from passing a law which impairs the obligation of a contract.

2. Cases involving the regulation of railroads, over which the General Assembly of Georgia is given peculiar and special powers by the Constitution of Georgia.

3. Cases involving a contract which was illegal and void under existing laws at the time of its execution.

In the case of the City of Dawson *v.* Dawson Telephone Company, 137 Ga., p. 62, cited by the Supreme Court of

Georgia in its opinion in the case at bar on page 48 of the Record, it was expressly held in the decision in that case (See page 63, 137th Ga.), that the City was not authorized under its charter or other legislative enactment to fix the charges to be made by telephone companies, so that the contract was illegal to begin with, and the question of the impairment of the obligation of a valid contract was not involved in that case.

The Case of Armour Packing Company *v.* United States, reported in the 209 U. S., p. 56; 52 L. Ed., p. 681; relied on by the defendant and cited by the Supreme Court of Georgia in its decision on page 47 of the record in support of its decision, was a case involving an Act of Congress, and even in this case, as to the power of the courts to abrogate a valid contract, there were three justices of the Supreme Court who dissented from the opinion of the majority. We cite the following quotation from the dissenting opinion of Justice Brewer in the case cited:

> "I want to emphasize this matter. The railway company and the packing company entered into a fair and reasonable contract for transportation. Independently of the statute, it was valid in all respects, and could have been enforced by the packing company against the railway company, but according to the ruling of the court the railway company was authorized arbitrarily to break the contract, raise the amount to be paid for transportation — thus unsettling the business of the shipper, ever it may be to the extent of wholly destroying it. Sustaining under those circumstances the power of the carrier and punishing the shipper shocks my sense of justice, and I cannot impute to Congress an intent by its legislation to make possible such a result.
>
> "It has been one of the boasts of our jurisprudence that it upholds the sacredness of contracts. By consti-

tutional provisions a State is estopped from passing a law impairing the obligation of a contract, and again and again has this court stricken down legislation having such effect. While there is no such restriction upon the power of Congress, yet Congress has in this case broken no contract. It has simply, as held by the court, given permission to a carrier, arbitrarily and without inquiry or decision by any tribunal, to repudiate its contract."

Counsel for plaintiff in error will perhaps argue that it is necessary to give the Railroad Commission of Georgia this power over contracts of public service corporations, otherwise parties may take advantage of the possible change in the law before it was changed and defeat the purpose of the law by entering into long term contracts. This argument is not applicable to the case at bar for the reason that it will not be contended that such purpose or motive actuated the parties in making the contract involved in this case. It was a valid contract when made which both parties entered into in good faith, with no thought of avoiding any law, present or future.

The language of Mr. Webster in the Dartmouth College case is appropriate to this argument of counsel:

"Much has heretofore been said on the necessity of admitting such a power in the Legislature as has been assumed in this case. Many cases of possible evil have been imagined which might otherwise be without remedy. Abuses, it is contended, might arise in the management of such institutions, which the ordinary courts of law would be unable to correct. But this is not only another instance of that habit of supposing extreme cases, and then of reasoning from them, which is the constant refuge of those who are obliged to defend a cause, which upon its merits, is indefensible. It would be sufficient to say in answer that it is not pretended there was here any such case of necessity. But a still more satisfactory answer is, that the apprehension of danger

is groundless, and, therefore, the whole argument fails. Experience has not taught us that there is danger of great evils or of great inconvenience from this source. Hitherto, neither in our own country nor elsewhere, have such cases of necessity occurred. The judicial establishments of the State are presumed to be competent to prevent abuses and violations of trust, in cases of this kind, as well as in others. If they be not, they are imperfect, and their amendment would be a most proper subject for legislative wisdom."

We think it clear that there existed a valid contract between the Union Dry Goods Company and the Georgia Public Service Corporation at the time the orders of the Railroad Commission were passed, and we think it equally clear that the holding of the lower courts that these orders must result in the abrogation of the contract, is an impairment of the obligation of the contract, and therefore violative of the provisions cited of the Federal Constitution.

It follows from the same argument that the construction of the lower courts upon these orders of the Railroad Commission of Georgia is violative of the due process clause of the Federal Constitution as contended for by the plaintiff, for it would not be due process of law as to the plaintiff in this case to deprive it of the right which it has vested in the contract and give those rights to the defendant without compensating the plaintiff therefor. This is true since the vested rights of the plaintiff in this contract are private property, just as much as land or other personal property. If it be contended that the taking of plaintiff's rights under this contract is the taking of the plaintiff's property for public use, then we answer that it cannot be taken under the Federal Constitution without just compensation being paid therefor.

The Code of Georgia, Section 2234, reads as follows:

> "Any person or corporation creating electricity in this State may make contracts and lease power, or any part thereof, to any person or corporation."

This is an Act of the Legislature of 1894, and was in effect at the time the contract in this case was entered into, so that it clearly appears in this case that the plaintiff was a corporation, possessing general powers of corporations under the laws of Georgia to contract for things necessary to carry out the purposes of its organization and the proof showed that this electric light and power was necessary to its business. It further appears that under the general law electric light companies had the power to make contracts at the time this contract was executed. It further appeared that the order of the Railroad Commission of Georgia itself made the contract a legal and valid contract. If, then, it was a legal contract when executed, when did it become an illegal contract so that it must be abrogated? Defendant's counsel will admit that there was nothing illegal about this contract up to the date of the orders of the Railroad Commission. Therefore, we say that it is beyond the power of the Legislature of Georgia, the Railroad Commission of Georgia or the Supreme Court of Georgia, by an Act, an order, or a decision construing an Act or an order to make illegal that which is legal, and which has been recognized as legal and acquiesced in by the parties to the contract. To permit this, would be to put into effect a retroactive law, an *ex post facto* law, as well as to impair the obligation of the contract itself.

In conclusion, we submit that one who attempts to abrogate a legal contract and impair the obligations of the contract, even though it is claimed that it is done for public use, and thereby takes the private property of a citizen, must con-

form not only to legislative enactment, but must conform to the requirements of the constitution. He must have in his hands not alone legislative permission, but constitutional permission. This, we submit, under the undisputed facts of the case at bar, the Georgia Public Service Corporation did not have when it refused to further execute its solemn written contract with the plaintiff. Plaintiff has at all times complied with the terms of the contract and the defendant should be made to do the same. We respectfully submit that under the pleadings, the evidence and the record as a whole the plaintiff was entitled to the relief for which it prayed and that the courts below erred in refusing that relief.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 346.

UNION DRY GOODS COMPANY,
Plaintiff in Error,

v.

GEORGIA PUBLIC SERVICE CORPORATION,
Defendant in Error.

Error to the Supreme Court of the State of Georgia.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The defendant in error, referring to the statements of fact contained in the brief of the plaintiff in error, states the following additional facts which appear from the record:

The defendant was chartered and organized as a public utility corporation in 1912, under the laws of Georgia, and has done business as such exclusively in said State of Georgia, and County of Bibb, and the Macon Railway & Light Company was also a public utility corporation organized under the

laws of said State and doing business as such exclusively in said State and County. Page 37.

The duly certified copy of the order, in re application of the Georgia Public Service Corporation, Macon, Georgia, for increase of rates as exhibited to the answer of the defendant and introduced in evidence by the defendant, showed that the Georgia Railroad Commission on the 24th of February, 1914, and after evidence and argument, established certain maximum schedules of rates to be charged by the defendant as reasonable and just, and it affirmatively appeared in said order that the report and opinion adopted on said day by said Commission on the application of the Macon Railway & Light Company was made the report and opinion of the Commission in the matter of the application of the defendant also. Page 39.

And the extract from said opinion, duly certified, was also exhibited to the defendant's and put in evidence by the defendant and showed that the alleged contract of the petitioner and all smilar contracts had been expressly abrogated as unlawfully discrminatory by order of said Commission.

See Exhibits "A" and "B" to the defendant's answer. Pages 39 and 40.

There was no objection to the admission of these certified copies in evidence and there is no assignment of error on the part of the Court in admitting them in evidence.

The action of the Commisson made its order of abrogation applicable to the case of the defendant as well as that of the Macon Railway & Light Company.

Defendant did not simply take the position that it was not bound by the alleged contract of the petitioner but that it had no right under the law to charge the petitioner the rates herein specified without charging all other customers of the same class the same rates.

The answer of the defendant was duly sworn to and was therefore evidence on the hearing for the injunction.

And defendant now calls attention to the following averments in said answer that were not contradicted by any evidence in the case:

"The defendant denies that its bill for March exceeds the value of the service rendered and the value of the current supplied by the defendant to petitioner for that month."

"Defendant denies that its rates as charged by petitioner are excessive."

"Defendant says that said order and rates as established (by the Commission) are both lawful and constitutional and are liberal so far as the petitioner is concerned and moderate so far as the defendant is concerned."

"Defendant says the service of defendant is worth more to petitioner than it is required to pay under the rates established by the Commission."

"That when the said contract with petitioner was signed the rates therein specified were made extremely low to meet the rates of the Macon Railway & Light Company, another public utility corporation organized under the laws of said State and also doing business exclusively therein and in said County of Bibb, that under and because of the competition then ensuing it soon became certain that the business of neither could be long continued because notwithstanding the proper economy practiced by both, the income of each company was ruinously less than its operating expenses."

"That thereupon in order to save themselves from insolvency and to enable them to furnish the public with light and power and to secure sufficient receipts to pay operating expenses and some net income, they severally applied to the Railroad Commission of Georgia, the tribunal established and empowered by the constitution and laws of the State to inves-

tigate and determine such questions, to reasonably and justly increase their rates, and said commission, after full investigation, and hearing evidence and argument from all the parties at interest desiring to be heard, and after mature consideration, on the twenty-fourth of February, 1914, ordered that on and after March 1, 1914, and until the further order of said Commission, certain schedules of rates should be the maximum schedule of rates to be charged by this defendant for the classes of service indicated in said order, as will fully appear from said order itself as hereto exhibited by Exhibit 'A' and already referred to in this answer and made part thereof."

"This defendant further answering says that while the said orders of the said Commission establishing maximum rates for this defendant already referred to and shown by said exhibit were of themselves under the law effective to abgorate the rates specified in petitioner's contract and did so abrogate them, the question as to the power and duty of said commission to abrogate them and the similar rates specified in all the similar contracts signed by defendant and other customers, was distinctly raised by a number of similar customers, and said question was fully argued before said commission on the hearing and said Commission after mature consideration in its opinion delivered in both cases on the 24th of February, 1914, decided that it was its power and duty to abrogate all of the rates specified in all of such contracts then outstanding, including that of petitioner, on the ground that such rates were unlawfully discriminatory and did in such opinion expressly and positively abrogate them, as will more fully appear from the deliverance of said Tribunal on the subject of special contract rates in said opinion, as shown in Exhibit 'B' hereto attached as a part of this answer." Pages 34, 35, 36, 37, 38, 39, 40.

REASONABLENESS OF COMMISSION'S RATES.

The only alleged attack in the pleadings of the plaintiff on the reasonableness of the Commission's rates is contained in the amendment filed by plaintiff since the rendition of the decision of the Supreme Court of Georgia, in the case of Union Dry Goods Company *v.* Georgia Public Service Corporation (141 Ga. 841, 848), namely, on the 29th day of April, 1915, and in paragraph 5 thereof, and in the following words:

> "Plaintiff avers further that the rate fixed in said contract *was* a reasonable rate, paying to the defendant company a fair profit for the services rendered." Page 32.

The date of the contract was the 18th of July, 1912.

The date of the action of the Commission fixing the rate was February 24, 1914, to take effect March 1, 1914.

There is no allegation that the rate fixed by the Commission was unreasonable and unjust or unreasonable or unjust, at the time it was fixed or at the time of the trial or at any other time.

The law presumes that the Commission rate was reasonable and just when it was fixed and that it has been reasonable and just ever since.

The contract rate may in fact have been reasonable when the contract was made, and the Commission rate may in fact have been reasonable and just when it was fixed, and may have remained so up to the date of the trial.

The plaintiff complains that the court below would not allow it "to prove *inferentially* that the rate fixed by the Commission was an unreasonable rate because it was greatly in excess of the rate fixed by the contract which afforded a large profit upon the investment and for the services rendered."

While facts may be proved inferentially, allegations in pleadings cannot be made in that way and the plaintiff had no right to attack the Commission's rates inferentially, or even by positive evidence, as unreasonable and unjust or as unreasonable or unjust without an allegation to such effect, and the Court properly held that the proposed testimony was inadmissible.

There is no prayer for any judgment or relief on the ground that the rates fixed by the Commission are unreasonable or unjust, so that it appears that the plaintiff was seeking to prove inferentially what it had not alleged, and without any stated purpose for so doing.

If the plaintiff had the right to abandon its written contract of 1912 which was its only alleged cause of action, and substitute an allegation that the charges fixed by the Commission and demanded by the defendant were unreasonable, and its pleadings and prayers were sufficient for such purpose in all other respects, it would be incumbent upon the plaintiff to pay or offer to pay what it admitted would be reasonable and just when insisting upon the service of the defendant, and upon accepting the same, and submit to a decree compelling such payment.

We repeat that there were no pleadings authorizing the introduction of the rejected evidence.

The Judge was acting upon consent both as Court and Jury and even if the evidence offered was admissible, it was wholly insufficient to require or justify the Court to abrogate the Commission rates as unreasonable and, therefore, substantial justice has been done.

The Court below had the right to presume that the Commission in fixing the rate took into consideration conditions, etc., at the time it acted and did its duty, and had the right to refuse to infer from what the plaintiff offered to prove at

prior dates, that the Commission had fixed unreasonable rates.

The plaintiff then contended and now contends in its bill of exceptions that the evidence offered and rejected only "would have tended to show that the rate named in the contract was a reasonable and legal rate" (p. 13) and did not claim to be able to produce or offer any additional evidence of the same character or of any other character in support of its contention.

The Court was to pass upon the sufficiency as well as the admissibility of the testimony and if the Court had admitted it for its own consideration it would have been wholly insufficient for setting aside the Commission rate.

Whatever route the case may have taken, it reached its proper and only destination.

The evidence offered and rejected did not deal with net profit as now contended by plaintiff in its brief.

The plaintiff in its brief cites no authority to the effect that the reasonableness or justice of the Commission rate could be attacked in this proceeding as sought, or that the same could be attacked at all.

"Evidence that at the time of making the contract the parties acted in good faith, and that the contract was made at the solicitation of the Public Service Corporation, which was also making similar contracts with other customers in the city at lower rates than those made with plaintiff, and that the conventional rate paid by the plaintiff afforded the Public Service Corporation a fair and reasonable profit for the service and electricity furnished, was insufficient to overcome the presumptions that the rates prescribed by the railroad commission more than a year after execution of the contract were reasonable. And there being no other evidence offered to show the unreasonableness of the rates prescribed, the rejection of the evidence indicated above will not require a re-

versal; nor was there error in admitting properly certified copies of the orders offered by the defendant. Union Dry Goods Company *v.* Georgia Public Service Corporation, 145 Ga. 659. See Sorrell *v.* Central Railway, 75 Ga. 509, Southern Railway Co., *v.* Atlanta Stove Works, 128 Ga. 207."

AS TO PARTIES.

The plaintiff makes no attack in its pleadings on the action of the Commission on the ground that it was not a party to the proceeding or had no notice thereof.

The testimony of Wagnon (p. 8) relied on by plaintiff on these subjects is practically to the contrary.

He says: "I saw it in the papers. I do not exactly understand your question as to whether I wired Mr. J. Ellsworth Hall to inform him that it was necessary for him to be ready, and as to whether or not Mr. Hall informed him that Mr. Robert Berner, Mr. N. E. Harris, together with Mr. Wallace Miller, were representing generally the City of Macon, including the attorney, Mr. Walter DeFore."

"I did not discuss sending anybody there to represent me. Mr. Juhan may have done so; I did not personally. Yes, I knew these attorneys were contending for the maintenance of the contracts like mine in other cases. I knew that these attorneys were before the Railroad Commission, representing other parties in the City, whether like our contract I did not know. In a general way I knew there were lower rate contracts."

Mr. Wagnon also stated he was Secretary and Treasurer of the Union Dry Goods Company, and spoke of himself as the petitioner in the case.

It thus appears that the plaintiff had actual notice and a full opportunity to be heard specially if it desired and contented itself with being indirectly heard through others.

But this was not a case in which any formal notice was required.

Wadley Southern Railway Co. *v.* State, 137 Ga. 497.

"An order of the Railroad Commission, fixing a schedule of rates to be charged by public-service companies in a given municipality, is not invalid solely because a contract-holder of one of the public-service companies was not made a party and notified of the proceedings before the Commission."—Union Dry Goods Company *v.* Georgia Public Service Corporation, 145 Ga. 659.

POWER OF COMMISSION TO MAKE RATE AND SUSPEND CONTRACT.

"If a patron of a public service corporation furnishing electrical power and light sees fit to make a contract covering a definite period of time, where no rates had been prescribed by the Railroad Commission, he will be taken to have done so subject to subsequent schedules of rates lawfully prescribed by the Commission."

"Constitutional restraints upon the impairment of the obligation of contracts do not prevent the State from exercising such powers as are necessary in the exercise of its sovereign right to protect the lives, health, morals, comfort, and general welfare of the public, though contracts previously entered into between individuals may thereby be affected."—Union Dry Goods Company *v.* Georgia Public Service Corporation, 142 Ga. 841.

Railroad Commission *v.* Louisville & Nashville R.R. Co., 140 Ga. 817;

Hudson County Water Co. *v.* McCarter, 219 U. S. 349, 357.

Armour Packing Co. *v.* United States, 209 U. S. 56.

Louisville & Nashville R. R. Co. *v.* Mottley, 219 U. S. 467.

Dawson *v.* Dawson Telephone Co., 137 Ga. 62.

"It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals."—Manigault *v.* Springs, 199 U. S. 473, 480.

AS TO CONSTITUTIONALITY OF ACT OF 1907, CONFERRING JURISDICTION ON COMMISSION, AND ORDER PASSED THEREUNDER.

"The Railroad Commission Act of 1907 (Acts 1907, p. 72) giving to the Commission jurisdiction over electrical lighting and power companies, and the order of the Commission fixing maximum rates in the instant case, are not void as in opposition to the clauses in the Federal and State Constitutions prohibiting the passage of any *ex post facto* law, or law impairing the obligation of contracts, or the taking of property without due process of law, or for a public use without just compensation."

"Nor do the 5th and 6th sections of the Railroad Commission Act of 1907 (Civ. Code 1910, sections 2662, 2663) violate article 1, section 4, paragraph 1 of the Constitution of Georgia, forbidding special legislation in a case already

provided for by an existing general law, and declaring that "no general law affecting private rights shall be varied in any particular case by special legislation except with the free consent, in writing, of all parties to be affected thereby."—Union Dry Goods Company *v.* Georgia Public Service Corporation, 142 Ga. 841.

"Freedom of contract is a qualified and not an absolute right. There is no absolute freedom to contract as one chooses. Liberty implies the absence of arbitrary restraint—not immunity from reasonable regulations. Where police legislation has a reasonable relation to an object within governmental authority, the legislative discretion is not subject to judicial review."—Chicago, Burlington & Quincy R. R. Co. *v.* McGuire, 219 U. S. 549.

"If the shipper sees fit to make a contract covering a definite period for a rate in force at the time, he must be taken to have done so subject to the possible change of the published rate in the manner fixed by statute, to which he must conform or suffer the penalty fixed by law."—Armour Packing Company *v.* United States, 209 U. S. 56.

"If the legislature had no power to alter its police laws when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable."—Kentucky & Indiana Bridge Co. *v.* Louisville & Nashville Railroad Co., 34 Am. & Eng. Ry. Cases, 630, 653.

"Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business, or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police powers

of the State; and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference."—Kundling *v.* Chicago, 177 U. S. 183.

"When the matter now under consideration was before the State Railroad Commission, after a full hearing, it passed the order which is attacked. It is true that two members of the Commission dissented, but the majority of the Commission passed the regulation, and that becomes the official action of the body, and must be so treated by this court, and given force accordingly. The evidence before the Commission was doubtless conflicting. But they solved the conflict. It is not shown that the Commission acted arbitrarily under the evidence before them. In the record brought to this court there is no lack of evidence as to the large number of people affected and the extent of the inconvenience imposed upon them. The courts ought not to interfere . . . . What is said in regard to the Federal Constitution applies also, to a large extent, to the due-process clause of the State Constitution, *mutatis mutandis*."—Railroad Commission *v.* L. & N. R. R. Co., 140 Ga., 817, 836.

Respectfully submitted,

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of counsel